POLITICAL THEORY AND PARTY ORGANIZATION IN THE UNITED STATES

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THE HISTORY OF POLITICAL THEORY AND PARTY ORGANIZATION IN THE UNITED STATES

BY

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GINN AND COMPANY

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PREFACE

A comparative study of the development of political theory and party organization will disclose the unique field occupied by the United States for such investigation. Here, as in no other country, the conditions for such development exist. A rich territory of inexhaustible resources, a population composed of the great middle classes with an instinct for self-government, a spirit of democracy pervading all ranks, a jealousy for the freedom of thought and speech, an insistence on the worship of God in accordance with the individual conscience, render the United States the best possible field for such growth.

In this work only those events are noted which bear upon the growth of political theory and party government. These events are marshaled so as to show a rational development, with little regard to chronological arrangement, but with special reference to logical sequence. Only such parts of the party platforms are noticed as will assist in the better understanding of this interesting field in American history.

To add vitality to the subject, distinguished leaders are brought forward, such as Hamilton, Jefferson, Marshall, Webster, and Calhoun. In this part of the work no attempt is made at detailed biography, the object being simply to point out some facts in the lives of these statesmen which explain their position as representative men of their times. This use of the personal element in studying American politics through men who stand out from among their fellows, will, I believe, give the work added interest for both teacher and pupil, and for the general reader. The two schools of political theorists are frequently referred to as the Loose Constructionists and the Strict Constructionists, which become identical with the Federalist and

Anti-Federalist parties. This same difference later separates the Whig from the Democratic party, and still later the Republican from the Democratic.

Party government, inevitable to a certain degree in a republic, naturally develops a narrow partisan spirit on the part of the voters. One of the most striking phenomena of political history is the close division of the voters of the United States, where fifteen million men cast their ballots for two candidates. In many of the national campaigns a change of but a few thousand votes would have reversed the result. An intelligent review of our political history will reduce this partisan spirit, by the recognition of the relative justice of the claims on both sides of the issue. It will not make party organization less effective, but it will liberalize the citizen by a broader view. It enables the Hamiltonian partisan to recognize the claims of a Jefferson follower, and vice versa. To such a citizen party is not an end, but a means to an end, and his fealty is to country rather than party.

The book is designed to be more than a text. It should appeal to that large portion of our citizens who are not interested in school subjects particularly, but in matters of general interest to a citizen of the republic. Intelligent participation in governmental affairs depends upon widely diffused knowledge of our political system.

In the preparation of this work I am greatly indebted to my wife, Eva Candas Fess, whose patient and helpful service aided greatly in the arrangement of the material; and to Dr. J. Franklin Jameson, of the Carnegie Institution, under whose scholarly enthusiasm the inspiration for publishing this work was gained.

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POLITICAL THEORY AND PARTY ORGANIZATION IN THE UNITED STATES

CHAPTER I

ORIGIN OF POLITICAL PARTIES IN THE UNITED STATES

Essentials of party organization. Party organization in the government of a country depends upon the freedom of thought and action among the people of that country. Where this freedom is denied, political activity has nothing upon which to rest. The uninterrupted communication of ideas, so essential to the formation of effective political machinery in the hands of the people, presupposes this freedom. No student of political science should be surprised at the absence of party organization, as the American understands it, in countries like Russia or Turkey. In fact its growth in modern Europe is a thing of quite recent times. Formerly the governments were so jealous of their prerogatives that any number of persons, assembled to consider the operations of their rulers, fell under the ban of conspirators, and were exceedingly fortunate if they escaped punishment. Holland and England are exceptions to this order. Party organization predicates participation in government by the people. Otherwise it would be no more nor less than cliques.

Its conception rests upon difference of opinion freely expressed. No matter how great this difference, it is of no importance without freedom of expression. Only where emancipation of opinion is enjoyed, do parties flourish. The sifting of Europe to secure the planting of America came about through the struggle for this emancipation. It resulted in the selection of a rare people for the beginning of a great civiliza-

tion. The restrictions by governmental decrees of the freedom of the intellect, the clipping of the wings of the mind by a short-sighted policy, based upon the theory that the most direct route to greatness was by the suppression of political and religious heresy, were the chief occasions for the alarming exodus of some of the best brain and heart of the old world to the virgin soil of the new. It must be admitted that some of these sufferers in time forgot the lessons of the past and in a measure employed the methods of their ancient enemies to suppress the rights, the free exercise of which was the motive for their invasion of the wilderness of America. Barring these cases, the most distinctive ingredient in this civilization from the beginning of the constitutional period is the guarantee of freedom of thought and action.

To guard against any spasm of oppression the people secured for all time this recognition by inserting in the organic instrument of law the very first of the amendments to the Federal Constitution, which declares that Congress shall have no power to make any law abridging the freedom of the press or of speech, or respecting the establishment of any religion, or preventing the people peacefully to assemble to petition the government for the redress of grievances. In this sense the American political party is unique. This constitutional protection furnished the most fertile soil for party growth. In this soil at one time or another almost every theory that has occupied the mind of a citizen has been planted, and has sprouted, some to grow and others to wither away. Such multiplicity of suggestion, creating at times such agitation as to be a source of great alarm to European countries, has been received in this country as a matter of course, and frequently passes with but an occasional mention, due to the confidence of the average citizen that the fire of free discussion will invariably burn out the dross and preserve the gold. This people has unbounded confidence that no real good thing can permanently suffer in open debate. In this forum the points

of difference form the nucleus for party organization. Around them and over them the party lines are drawn.

Rational basis of party difference. On political matters the normal line of demarcation is that which separates the radical from the conservative mind. At times it assumes the contention between the positive and the negative mind. The dispute is waged by one party affirming and the other merely denying, and vice versa. Radicalism is an attribute of youth; conservatism, of old age. As in the life of an individual so it is in the life of a nation; aggression precedes the spirit of deliberation. In every political division and in every municipality, the inauguration of civic and municipal improvements most frequently originates with the younger element of the community, due to the aggression so natural to youth. Radicalism is an essential ingredient of party organization. Its existence necessitates the opposition of the conservative, hence the constant presence of the two.

This difference revealed in the Articles of Confederation. Just preceding and during the American Revolution the colonists were divided as to the proper measures to be employed by them to induce the mother country to discontinue her policy of arbitrary government. From the very beginning there were those like Otis, Henry, and Dr. Warren, who urged radical measures. Opposed to such measures were such leaders as Washington, Hamilton and Jay, who favored conservative means. In the course of events the logic of the situation favored the radicals, and by the time the war was imminent conservatism was eliminated and most of the population was alive with the spirit of independence. Before this acute stage was reached the radical wing took the name of Whig, and nicknamed the conservative, Tory. In such atmosphere as a war for independence, no conservative could flourish; hence with the coming of the war the conservative was left with the alternative of changing his politics or his place of residence. He readily chose the former, and soon the Whigs comprehended

nearly all the population of the colonies, and for the time being there was no semblance of party difference. The heat of the war had welded the opinions into one belief.

During this period an attempt was made to form an organic law for the government of the colonies as one nation. It resulted in the famous Articles of Confederation, written by John Dickinson, and, by 1781, ratified by all the thirteen States, when it became the charter of government. Owing to the imperative need of some form of government at this time to preserve the fruits of the war, and to the inevitable weakness which must follow a period of useless debate over political theories, the instrument was adopted with many gaping defects. To satisfy the parties who feared the destruction of the autonomy of the individual States, the fatal policy of State Sovereignty was declared and agreed upon. From the same motives the vote on all measures was to be taken by the States, each State to have but one vote. To render this policy yet more fatal to efficient administration, it was declared that each State should support its own delegates to Congress with power to withdraw them at will. From the same motives all taxation was placed in the power of the States. There was no provision for either an executive or a judiciary, consequently there was no coercive power. These glaring defects were due in part to lack of experience in Federal government, in part to the inability to do better than to compromise, and in part to the anxiety to afford some governmental protection against the threatened anarchy following the close of the war. The defects of the plan were soon apparent and the agitation for their reformation was begun.

Reasons for revising the system. The indescribable confusion arising out of the paper-money craze that swept over the colonies, the petty jealousies emanating from the lack of uniform regulation and interstate commerce, the embarrassment of the nation before the world, arising out of the inability to compel the States to observe the treaty stipulations, the

imbecility of the general government to protect itself from the mutinying of a few bedraggled soldiers who compelled it to seek refuge under the guns of Trenton, and its impotency in the face of a rebellion like that of Shays in Massachusetts, when it had to seek the aid of the State to quell it, — all were eloquent in demanding either a revision of the old system or a substitution of an entirely new one. The agreement was finally reached to revise the old system. The meeting held for that purpose was in Philadelphia, from May to September, 1787, and is known in history as the Federal Convention, sometimes called the Constitutional Convention. The fame of that convention is great. The personnel of it represented a wide range of ability. Its courage was equal to the intricate problems confronting it. It was free of the theoretical crank. While dogmas were offered and defended with spirit, the sense of the general needs was keen. Many plans were submitted but no plan was advocated as the only one. The spirit of give and take was present, which is revealed by the numerous compromises. Scarcely any provision in the instrument, as it came from the hands of the convention, could have been identified with itself when first introduced. This explains why the instrument was not the work of any man, or even of a few men, but decidedly the work of the convention.

The Constitutional Convention: its problem. A careful examination of the activity of the members of that convention with a view to ascertaining political theories, reveals at least two types of mind: namely, the radical, which desired to try the experiment of government by the people, but reserving the largest possible participation to the individual citizen and the State, and the conservative, which placed more power in the government and in a degree restrained the people. The advocates of the first feared the aggression of authority in the government, if centralized; those of the second feared the extravagance of liberty, if not somewhat restrained. The

former sought the element of local self-government as the chief end; the latter, the element of order. The former worshiped the goddess of liberty, the latter the god of power. Here is the line of cleavage. It separates the strong central government from the looser State governments. The former makes the national government sovereign and boldly denies such power to the States. The latter declares the government a confederation of sovereign States.

Citizen Genêt and the Democratic societies. These differences in political theory did not show in party organization at first. There was no appearance of such organization in the Federal Convention. All were united in the selection of Washington for the first President. The choice for Vice-President was made from personal, rather than political or party, reasons.

Autograph of Genêt

Not until after Washington's second election did these differences take a partizan color. The immediate occasion for it was the presence and activity of the French minister, Citizen Genêt. The brilliant young Frenchman, embodying the radicalism and extravagance of the French Revolution, was sent by his government to secure the aid of the American republic in her fearful struggle with England. He came with the assurance of a hearty greeting because of the attitude of his government in its struggle for independence. He affected belief in his success to secure the much needed aid. He landed in a place remote from the capital and was sumptuously feasted by ardent friends, after which he began his tour to the capital of the country. President Washington, recognizing the gravity of the situation, after mature deliberation decided upon a policy of neutrality and refused aid to his former ally. This was the occasion for an outburst of indignation rarely observed. France had many ardent sympathizers in this country. At once the famous Democratic Society, modeled after the yet more

famous Jacobin Club of Paris, was organized in Philadelphia with the famous Dr. Rittenhouse as president, and Alexander J. Dallas, afterward Secretary of War under Madison, as a member of the correspondence committee. The constitution adopted declared its object to be:

1. That the people have the exclusive and inherent right and power of making and altering forms of government, and that for regulating and protecting our social interests, the republican government is the most natural and beneficial form which the wisdom of man has devised.

In other sections it set forth the rights and duties of the citizens of a free government to exercise freedom in criticizing the public officials, if necessary; independence of judgment in the citizen, etc.

Growth of the Jacobin clubs. The first and mother society was organized in 1793, and within two years there were in existence at least forty-two such societies, scattered from Charleston to Boston, and from New York to Pittsburg, Cincinnati and Louisville. This is perhaps the earliest attempt in America at party organization for purely political purposes. These societies were responsible for unusual political activity in many communities. They committed excess in some respects and thereby lost their most influential members who withdrew. In 1794 their activity in connection with the Whisky Insurrection in western Pennsylvania called out a rebuke from President Washington, who referred to them in a special message as follows: "The arts of delusion were no longer confined to the efforts of designing individuals. The very forbearance to press was misinterpreted into a fear of urging the execution of the laws, and associations of men began to denounce threats against the officers employed. From a belief that, by a more formal concert, their operations might be defeated, certain self-created societies assumed the tone of condemnation."

The Jacobin club in Congress. This official cognizance of the existence of political organizations and the reference to

them as fomenters of rebellious conduct called public attention to them. At once the message was taken up by both Houses of Congress. The Senate with remarkable unanimity stigmatized the societies as founded in political error and calculated, if not intended, to disorganize the government itself. In the House of Representatives they fared much better, due to the character of that body and to the personnel of the committee to which the matter was referred, at the head of which stood James Madison. The committee developed the fact that such unqualified condemnation would establish a dangerous precedent against free speech and the right of assembly to consider grievances. The committee remained silent on this part of the message. The matter came up and was the subject of extended debate, participated in by a great variety of talent and discussed with much spirit. Here was the occasion for the outlining of political theory and the alignment of parties upon the theory. It offered a natural point of difference. Here was the occasion for those out of authority to arouse the country to the dangers against which it had been warned by them often: namely, the tyranny of authority and the consequent suppression of free speech. The public was reminded of the inherent tendencies of the government to usurp such authority, and the habit of the governed to permit it. Reference was made to the struggle for the expressed recognition of the inalienable rights of the people, in the Constitution, and to its failure, until, by the refusal of the States to ratify the work of the convention without such recognition, the Constitution was so amended that the rights were appended to it in the first ten amendments in the form of a Bill of Rights. The existence of the societies in all parts of the country, the close affiliation of each to the other, the systematic correspondence carried on between them, made unity of action possible, which invited concerted opposition. This procedure was adapted to the formation of political parties.

Jay's treaty: its effect upon party formation. Immediately following this Jacobin agitation, came that upon Jay's treaty. The character and personnel of the opposition were similar to that against the neutrality policy. It showed a strongly tinged French coloring. At once charges were made that the British party was surrendering the honor of the nation. Washington realized the situation. He for the first time called together the heads of the departments; this was the first meeting of what is now called the Cabinet. At this first meeting the policy of the government was decided upon and the treaty was recommended. Then began the pamphlet war. The country was flooded with pamphlets denouncing the policy of the President and not sparing him personally. It is stated on the authority of the friends of John Randolph, of Roanoke, that, pending the treaty negotiation, he toasted the President as follows: "George Washington, may he be damned," and when those present refused to drink it, he added, "if he signs the treaty."

Methods of creating public sentiment. Through the political pamphlet all the country was excited. The opposition to the Administration adopted the policy of holding mass meetings to discuss the methods to pursue. At these meetings distinguished orators harangued the policy. At Charleston, South Carolina, Governor Charles Pinckney made a powerful address in which he arraigned the British influence in the Administration. Meetings of such character were held in almost every center of population in the country. Even Boston, the seat of the Federal influence, held such a meeting. Before the end of the second administration of Washington, party lines were distinct. The issues were not yet well formulated. There was no opposition to the form of government. All were agreed upon that. Neither was there now any opposition to the Constitution. All professed deathless loyalty to it. But the interpretation of the Constitution was the needed operation to permanently crystallize parties. Does

the Constitution permit such legislation? Is it constitutional? became the all important questions.

Inevitably the party in power suffers the charge of violating the Constitution. The exercise of authority falls to the party in power. Party lines will be drawn separating those who endorse such exercise from those who restrain it. The contention will be between the positive and negative forces. The contention of the first is that such legislation is for the general good, while that of the latter is that it is unconstitutional. In a short time the Constitution becomes the criterion of legislation between the ins and outs. In 1796 distinct political parties were placing before the people candidates representing their specific principles. Those who had defended the policies of Washington in his second administration presented John Adams as Washington's successor; while those who opposed them presented Thomas Jefferson. Adams was elected which was an endorsement of Washington's administration.

Progress of party formation under the elder Adams. Under Adams the opposition to the procedure was fought with increasing bitterness. This opposition became so flagrant that Congress undertook to restrain it and enacted the famous Alien Law, which enabled the President to send out of the country any person whom he thought dangerous to the government. Another law, the Sedition Law, subjected any person who wrote or published any slanderous or libelous matter against an officer of the government to a fine or imprisonment or both. This legislation was obviously in violation of the constitutional guaranty of freedom of speech and of the press. On this basis the opposition proceeded in its fight. It pronounced the measures to be in violation of the fundamental principles of government as declared by the first amendment to the Federal Constitution, without which the States would not have ratified the instrument. The party in power rejoined by declaring the laws constitutional under the "general welfare" clause. It declared through its leaders

that the object of government, as declared in the enacting clause of the Constitution, was to "establish justice" and "promote the general welfare"; hence such legislation was justified by the sanction of the Constitution. The opposition quoted, in refutation, the final sentence of the same clause, which declared that the object of government was to "secure the blessings of liberty" to the people. When the party in power succeeded in enforcing the aforesaid laws, the opposition party resorted to plans to awaken the public to an alleged alarming encroachment upon the liberties of the people. The most significant of these was inducing the States to pass resolutions setting forth the mutual rights of the government and the States. Madison, the father of the Constitution, was enlisted to formulate the now historic document known in history as the Virginia Resolutions, and Jefferson, the well recognized leader of the opposition party, was called into requisition to write the famous Kentucky Resolutions. These documents, written by these two distinguished Virginians, were accepted as the texts for the students of what from that day might be denominated the Virginia political theory. They defined the limits of the general government and declared the prerogatives of the State. They enlarged upon the blessings of local self-government and suggested the dangers of the exercise of too much authority in the general government. They asserted the right of the State, as well as of the nation, to act as judge of the constitutionality of a law. Madison's subsequent explanation of the Virginia Resolutions, made in the heat of the excitement of the nullification scheme of Calhoun, was a denial that those resolutions declared for the principle of nullification.

Federalist vs. Anti-Federalist. These two parties early took the names of "Federalist," which applied to the party in power up to the year 1800, and "Anti-Federalist," which applied to the opposition. Jefferson, who early became the leader of the opposition, disclaimed the name of Anti-Federal-

ist, which was thought to convey the idea of opposition to the Constitution. On the other hand, he insisted his party was the real protector of that instrument. These names are ambiguous since the Federalist was the advocate of the national principle and should have been called Nationalist; while the Anti-Federalist was the advocate of the Federal principle and should have been called Federalist. The real difference was one of interpretation. The party in power held to the principle of loose construction of the Constitution, while the opposition held to strict construction. The former declared that the Constitution is an instrument of both *expressed* and *implied* powers, while the latter held that it was an instrument of *expressed* powers *only*. The latter quoted, in support of its contention, the ninth amendment to the Constitution: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." This they insisted was sufficient to prove their contention that the powers in the Federal government were delegated, and all not so delegated were reserved to the people. In further support of their theory they quoted the tenth amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This, they declared, was an ample definition of the powers of the general government. "How are the powers delegated by implication?" they asked.

It was natural that the party formed in opposition to the aggression of the party in power would take the position of restricted or strict construction. Otherwise, where is the protection? This position would nicely coincide with the advocates of the fullest retention of local self-government for States, which in the extreme would assert not only State rights but also State Sovereignty, which is a different doctrine. Power, strong central government, loose construction of the Constitution, were principles of the Federalist party. Liberty,

local self-government, and State rights, strict construction of the Constitution, were principles of the Anti-Federalist party. The former might be denominated the Massachusetts theory of politics, the latter, the Virginia theory of politics. The former will flourish best in an urban population, the latter in a rural population. The former became identified with New England, the latter with the Southland. The former grows best among a people of varied industries, the latter with the plantation. While these principles were the dividing lines which separated the two parties, and while these parties had recognized leaders or heads, as Hamilton, the head of the Federalist, and Jefferson, the head of the Anti-Federalist, it is farthest from the true position to assert that these parties and these leaders consistently held to their principles. On the contrary, loose construction of the Constitution will rather be employed by the party in power, and strict construction by the party in opposition. Whatever may be the profession of leaders or the platform of parties, when they come into power and assume the responsibility of legislation and administration, they regard not so much their published principles as their obligation to serve the country and their privilege to live up to their opportunities to achieve some real advantage.

The revolution of 1800. By the year 1800 the pendulum of public opinion had swung so far to the side of democratic simplicity and the Jeffersonian policy, whatever that might have been, that a complete revolution was accomplished by the election of Jefferson to the presidency. Much speculation was indulged in the probable policy of the new Administration. Great fears were affected by the "friends of good government" over the consequences of the election. Dire results were predicted to follow the reversal of the same policy inaugurated by Washington and continued by Adams. It was openly alleged that the narrow policy of strict construction would lead to inevitable dwarfing of the nation. Within a

short time their fears, had they been more than mere pretense, would all have vanished.

Conflict between theory and practise. The new President met his duty bravely, and when the emergency growing out of the war between France and England arose, and Louisiana was about to fall into the hands of the British, he sought to thwart it, on the ground that England on our west would endanger the success of the new American experiment of Republican government. He at once counseled the acquisition of the territory. He was informed that it could be secured from France. Jefferson and his party were embarrassed by the Constitution which was silent as to the power of acquiring new territory. His first plan was to secure an amendment to the Constitution permitting the acquisition, but the time necessary to accomplish this would have defeated the purpose, and that plan had to be abandoned. His next proposition was to proceed to the purchase and have it endorsed by the people afterward; but that plan did not meet with the approval of his advisers. When there was no alternative but to abandon the enterprise wholly or throw his implied powers theory to the winds, adopt the loose construction theory and buy the territory, his patriotism was stronger than his consistency, and he proceeded to secure the Louisiana Territory, which act, as he said, "stretched the Constitution until it almost cracked." It might seem strange that the party of strict construction would adopt such loose construction measures; but it was no more strange than that the party of loose construction should adopt such strict construction measures as the opposition urged on the ground that the Constitution gave no authority for the transaction.

The construction of the Cumberland road was another instance of the abandonment of the party's principle of strict construction. The famous Embargo Act was a great stretch of power, which, under the rule to regulate commerce, exercised the right to destroy it.

Wisdom of political inconsistency. This complete facing about by the Anti-Federalists, by adopting the rule of liberal or loose construction, was not necessarily a change of political theory, but an accommodation to the exigencies pertaining to the exercise of necessary authority for effective government. Neither should the persistent opposition of the Federalists to the measures of their opponents, who were now employing their erstwhile methods, be taken as conclusive proof of the abandonment of loose construction for a strict construction policy, but simply the desire to place the whole responsibility of the administration of the government upon their opponents, who had displaced them. It is quite true that necessity is the mother of constitutional interpretation, as it is of invention. No party or leader will permit his party caprice to interfere with a successful career; hence the party and leaders in power, upon whom rests the responsibility of administration, may be adherents in theory to strict construction, but not in practise; while the party and leaders of the opposition may be adherents in theory to broad construction, but not in practise.

To consistently hold to theory under changing circumstances from a position of no responsibility to one of great responsibility, may prove hurtful to all, while the abandonment for the time being of the theory to satisfy the changing conditions will prove hurtful to nothing save the theory. This proposition is so well understood that all parties and most leaders have at different times stood on all sides of great issues; the leaders endeavor to stand with the party except in great revolutions of sentiment — such as were effected by the slavery question. When general disruption of party organization takes place, then party fealty is weak. This apparent vacillation does not prove the non-existence of the organic differences upon which political theory is based.

Two forms of political theory. The observer of political history in the United States must conclude that there are at least two distinct political theories in operation among the

people. The one tends toward centralization, the other toward decentralization. The former seeks to realize the strong central government, the latter local self-government. Expressed negatively, the first theory is fearful of the extravagance of the people; the second of the restraints of the government. In the form of propositions of political science, the first asserts, "That is the best form of government which up to a certain point governs most;" the second asserts, "That is the best form of government which up to a certain point governs least." These theories of government antedated the Roman Empire.

These forms observed in Greece, Rome, and England. In the government of Greece the pendulum swung to the side of self-government in free cities, thus denying the needed central authority over them in matters of general concern. The government became loose in its parts and was wrecked upon the rocks of anarchy. Rome employed a different policy which swung the pendulum in the opposite extreme. In the Roman régime there was recognition of the principle of local self-government, but there was no affiliation between these local governments and the imperial government; hence the tendency toward disregard for the local need and rights, which led to usurpation of power and the ultimate rise and fall of the monarchy. England, after the struggle of the centuries for the recognition of the principle of self-government, took the longest step toward the solution of the problem. For centuries the power in that country was in the Crown. Then, for a less duration, it was in the Lords. In modern England the power is in the people represented in the Commons.

The extension of this principle in England has not been fatal to the needed authority of the general government, which is really under the power of the people through their representatives in the Commons. It will be recalled that England's fatal experiment with her American colonies was the tendency toward arbitrary government, which denied the principle of

local self-government. In 1775 Burke, whom Dr. Johnson called the "greatest man in England," made a speech before Parliament in which he urged the granting of local self-government to the American colonies. He ably defended the principle and, as a precedent, he cited the case of Ireland, of which he said, "You changed the people; you altered the religion; but you never touched the form or the vital substance of free government in that kingdom. You deposed kings; you restored them; you altered the succession to theirs, as well as to your own Crown; but you never altered their constitution, the principle of which was respected by usurpation, restored with the restoration of monarchy, and established, I trust, forever, by the glorious Revolution."

Burke comprehended the problem as perhaps no man in his day and country did, for in his powerful presentation of the right and value of the exercise of the principle of local self-government, he was ever mindful of the necessity of the general prerogative. His estimate of the necessity of a strong central authority, exercising without restraint its constitutional prerogative, did not blind him to the other vital element in government: namely, the fullest retention and freest exercise of the principle of local self-government.

A new field for political theory. The American Revolution, which secured not only the recognition of the principle in question, but entire independence for the colonies, shifted the struggle of the two political theories from the old to the new world. The situation of the colonies, the partial recognition of local government, the character of the colonist, the wide separation and great variety of interests — all conspired to educate the people in an appreciation of the value of local government. The Revolution and especially the chain of causes leading to it were the occasion for a conflict of theories. The self-governing impulse had flowed out into the great charter of human liberties, the Declaration of Independence, and declared that governments were instituted among men to

secure the rights of *life, liberty*, and the *pursuit* of *happiness* through the consent of the governed.

Effect of the Revolution. The Revolution left the colonies in undisputed possession of the right of self-government. It detached the last vestige of monarchical government and left the colonies to create some substitute. The plan embodied in the Articles of Confederation was faulty on the side of too much local government. The Federal Convention was called to remedy this defect. Perhaps the most important question discussed in the Convention was that which pertained to the prerogative of the central authority and the retention of local liberty. The one school of thinkers contended for coercive power in the head; the other jealously guarded the rights of the several parts. The former insisted that the experience of the past decade proved the imbecility of government without such central authority, while the latter pointed to the régime under George III, and insisted that it proved that all our woes dated from the exercise of the very powers contended for by the friends of centralization. This contention separated the people into two factions: the one making the nation the chief repository of the strength and welfare of the people, the other making the States that repository. Thus was created party division over the old question which engaged the best thought of the race.

Liberty and authority in conflict in the Federal Convention. The constructive element in the Federal Convention declared the purpose of government to be the establishment of justice, domestic tranquillity, common defense and the general welfare. The decentralizing element declared that the end of government was the security of life, liberty, and the pursuit of happiness. To secure the objects as stated by the former, necessary authority was delegated to the national government and certain privileges were denied to the States, hence the various prohibitions to the States, as, for example: No State can enter into any treaty or alliance with a foreign power. On

the other hand, for the protection of the State and individual against any possible national aggression, the national powers are defined and certain limitations laid, as, for example: The writ of habeas corpus shall not be suspended except in specified cases, as in times of invasion or insurrection.

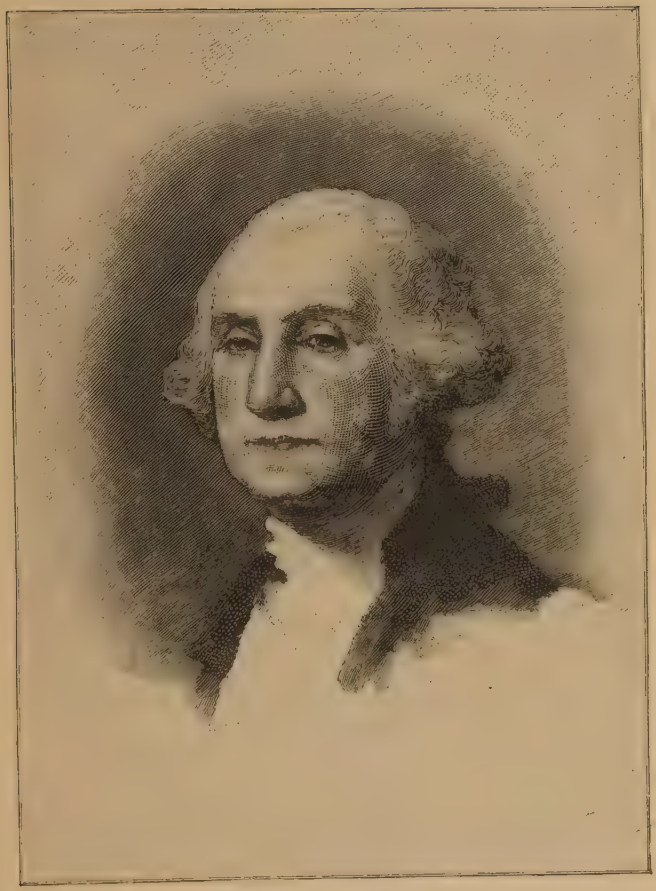
Hamilton vs. Jefferson. Perhaps the leading exponent of the central theory of government was Alexander Hamilton, of New York, which theory is denominated "Hamiltonian." With equal propriety it is alleged that the leading exponent of the looser theory was Thomas Jefferson, of Virginia, and it is called by some writers the Jeffersonian theory. Not that all the Northern section of the country endorsed the ideas of Hamilton — far from it; nor that all the Southern section of the country endorsed the views of Jefferson. Such men as Gallatin and Dallas of Pennsylvania, the Clintons and Burr of New York, Samuel Adams and Gerry of Massachusetts — all were strenuous advocates in their respective States of the Jeffersonian theory as against the Hamiltonian. On the other hand, Thomas and C. C. Pinckney of South Carolina, Iredell of North Carolina, Marshall and Henry Lee of Virginia, Smith of Maryland and Bayard of Delaware were among the ablest champions of the Hamiltonian theory as against the Jeffersonian. However, the logic of the situation made the Southern section the domicile of the Virginia theory, and the Northern, of the Massachusetts theory.

Conditions which favored sectional differences. Many conditions enter into the formation of such results. The manner of settlement of the two sections had something to do with the results. In Massachusetts the various settlements were made in communities or in large congregations. Usually each settlement was accompanied by the pastor who was the chief person of the settlement. His word was given due obedience. The settlers lived a community life. The town was laid out with the town hall or court-house on the square; near by stood the church building which was frequently used for school purposes.

Each person was allotted a certain amount of land. He had his home lot, his arable plot and his pasture land. The waste land and the woodland were usually held in common. Their government approached the charter form. If any person desired to settle in this community he was required to secure permission of the community. In case of differences, which were frequent, new settlements were made. The settlement of Hartford was directed by Hooker, who gave to his people a written constitution, which proves to be the first of its kind in history. Davenport settled New Haven because of some religious disagreement between him and the authorities in Massachusetts Bay. The founding of Rhode Island by Roger Williams resulted from similar reasons. These disagreements multiplied the number of settlements which soon spread over much of what is now New England. This fact, taken in connection with the presence of warlike tribes of Indians, explains the early efforts to confederate the different communities.

Form in the North. For the sake of mutual protection the near-by congregations adopted a plan of union. Several of these religious communities or units united to form the township. This township became the unit of the county, which was the political division immediately above the township. The county was the unit of the State or colony which was made up of the various counties. Thus the principle of local self-government was recognized in the county. As before stated, the church community was subordinate in a degree to the township, the township to the county, the county to the State and the State to the nation. Such tutelage developed the principle of State subordination in matters pertaining to the whole.

Form in the South. These conditions did not obtain in the Southern section. The character of the settlements and the purpose of the settlers preclude the church congregations and the township. The smallest unit was the county, which was



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no larger in area than the county in the North. The character of the soil which produced tobacco, rice and cotton favored the large plantation. The character of the climate favored slave labor. These two facts — the plantation and the presence of the slave — separated the governed from the governing and developed a form of aristocracy. The plantation became a law unto itself and was the chief object of political fealty. The necessity for the New England type of political organization did not appear in the rice and cotton sections. There was not the impulse for united action. Each State was sovereign in character and administration. Under these conditions the doctrine of State Sovereignty normally developed. The need of a strong central government did not appear, and if it had appeared the prevailing conditions did not suggest the character needed. Here then we have a rational basis for the growth of the two theories of politics.

Washington's influence. Perhaps the greatest single performance of Washington, as the first President, was his inauguration of the two theories of government, when he called to his assistance their respective heads, Hamilton and Jefferson. By the aid of these two men he was able to establish the new republic upon the two pillars: namely, a strong central government with the prerogative extending to all matters of general concern and with sufficient coercive power to insure effective administration of the laws; and a full retention of local self-government in all matters pertaining to the locality, thus insuring the protection of the autonomy of the State and the liberty of the individual. There is now little doubt that the theory of Jefferson, unrestrained, would have given too much liberty to the State and too little power to the nation, and with equal fairness it may be said that the theory of Hamilton, unrestrained, would have given too much power to the nation and not enough liberty to the State. The credit is really due to Washington, who, whether conscious of the act or not, combined these two theories, and in so doing solved

the greatest problem in the history of government: namely, the reconciliation of the two seemingly contradictory elements, authority and liberty, by guaranteeing energy in the nation and at the same time reserving freedom in the local government of the several States.

CHAPTER II

THE NATIONAL AND FEDERAL THEORIES

General vs. State government. Frequent collisions would be inevitable in a government composed of thirteen colonies, sovereign in some matters, subordinate in others, with undefined relations in many others. The first instance of such collision was in the case of Rhode Island, when that State declined to send delegates to the Federal Convention, and by 1789 had declined for the sixth time to call a convention to act upon the ratification of the Constitution. And not until the general government acting under the authority of the Constitution proceeded to treat Rhode Island as a foreign government was the State induced to reconsider its former position. It ratified the Constitution by the close vote of thirty-four to thirty-two. The same Convention sent this significant memorial to Congress:

> The people of this State from its first settlement have been accustomed and strongly attached to a democratical form of government. They have read in the Constitution an approach toward that form of government from which we have lately dissolved our connection at so much hazard of expense of life and treasure. Can it seem strange then that, with these impressions, they should wait and see the proposed system organized and in operation, . . . before they would adopt it as a constitution of government for themselves and their posterity.

Opposition voiced by Patrick Henry. The greatest contests were in New York and Virginia. In the latter State the opposition was led by Patrick Henry who clamored to know

by what authority the Convention employed the language "We, the People," instead of "We, the States." "The fate of America," he declared, "may depend upon this question. Have they said, 'We, the States'? If they had, this would be a confederation; it is otherwise a most clearly consolidated government." He declared it to be a revolution as radical as that which separated us from England. It was the relinquishment of the sovereignty of the State. When it was observed by the friends of the Constitution that eight States had already ratified it, he eloquently proclaimed: "If twelve States and a half adopted it, I would with manly firmness, and in spite of an erring world, reject it." "You are not to inquire," he declared, "how you are to become a great and powerful people, but how your liberties can be secured. . . . Liberty, the greatest of all earthly blessings, give us that precious jewel, and you may take everything else." This was the character of the oppositon argument, only less eloquent.

The Federalist. In New York the opposition was forceful and called out the famous articles now known as the Federalist, written principally by Hamilton and Madison, and in a lesser degree by Jay. The constructive ability exemplified in these papers places their authors on the level with the greatest minds in the history of ancient or modern civilization. At this time a majority of the colonists were adherent to the State Sovereignty theory or at least to the distinctive local self-government theory. In every State there was strong opposition to the ratification of the Constitution, which sprang from a deep-laid fear of centralization. But the imperative necessity for governmental protection against a condition of anarchy apparent in many quarters, together with the wishes of General Washington and other members of the Federal Convention, that the several States proceed to recommend in the form of amendments such changes as they deemed necessary, partially reduced this opposition, though it could not entirely prevent the existence of local faction.

The Bill of Rights as adopted. The Federal Convention omitted the Bill of Rights, and when its report reached the Continental Congress, an attempt was made by Richard Henry Lee, of Virginia, to have such provision as a Bill of Rights inserted in the form of an amendment. It was decided to recommend to the States their ratification of the Constitution, with suggestions in the form of amendments, covering the points contended for, in a Bill of Rights. This plan was pursued. Of the numerous amendments suggested by the various States, twelve were passed by Congress and submitted to the States for ratification. Ten of the twelve received the necessary votes of three-fourths of the States, and thus became a part of the organic law of the land. Thus the Hamiltonian theory was adopted by omitting from the body of the Constitution any provision for a Bill of Rights, and the Jeffersonian theory was secured by the adoption of such a Bill of Rights to be appended to the instrument in the form of amendments, and with the force of the instrument itself. The first nine of the amendments pertain to the rights of the people:

1. Freedom of conscience, of speech, of the press, of assembly and of petition.
2. Freedom to bear arms.
3. Freedom of the home from sheltering soldiers except in times of war, and then only by due process of law.
4. Freedom from unreasonable searches and seizures.
5. The rights of a person charged with crime, to an indictment, etc.
6. The rights of the criminal to trial by jury, etc.
7. Right to jury trial in civil cases of certain character.
8. Freedom from excessive bail or fine, and from cruel punishment.
9. Rights not delegated to the government, retained by the people.

The tenth amendment provides against usurpation of power by the general government.

Federal against national theory of government. The current of events accentuated these distinctions. Ere the close of Washington's second administration Hamilton and Jefferson, the two great exponents of the two theories,

were fairly recognized as the respective leaders of two parties, whose difference was gauged by the difference of constitutional interpretation, which furnished the line of demarcation between the adherents of the two. The one party sought the recognition of privilege in the State and people, while the other sought the necessary authority to secure law and order.

The experience of the colonies under the British government induced the State to look with jealous eye upon the exercise of every power of the superior authority as a restraint of State Sovereignty, and to that degree dangerous. It was generally believed by the members of the Federal Convention that the State was exempted from being compelled to answer as a defendant in any case in law or equity, arising from a suit commenced by a citizen of any State or of a foreign State. This opinion was shared by John Marshall, of Virginia, afterward chief justice of the Federal Supreme Court.

Conflict between the government and the State. In 1792 the State of Georgia was thrown into a spasm by the appeal from its own courts to the Federal Supreme Court which assumed jurisdiction and proceeded to apply the law. However, the court granted time to the State to reconsider its action. The Georgia House of Representatives declared such assumption of authority would "effectually destroy the retained sovereignty of the State, and would actually tend in its operation to annihilate the very shadow of State government, and would render them but tributary corporations to the government of the United States." It further declared that the State would not be bound by the decision of the court, but would regard the decision as unconstitutional. It recommended an amendment to the Federal Constitution providing against further interference by the Federal Supreme Court.

In 1793 the House of Representatives of Georgia passed an act declaratory of State Sovereignty, and resolved that any person attempting to levy on property of the State to satisfy the claim of one Chisholm, under the authority of the United

States in pursuance of the Supreme Court decision, " is hereby declared to be guilty of felony, and shall suffer death, without the benefit of clergy, by being hanged." Here for the first time was announced the principle that the primary allegiance of the citizen is to the State, not to the nation; and that other principle equally far reaching, that the State is judge of the constitutionality of its own acts. These are the bases upon which the theory of State Sovereignty is reared.

The New Hampshire case. A case not different in principle came up from the State court of New Hampshire. Here the case had been adjudicated in the colonial courts of New Hampshire, and, after the colony became a State under the Federal Constitution, was brought into the Federal courts, first in the district of New Hampshire and then into the Supreme Court of the United States, which confirmed the lower court decision, thereby taking jurisdiction of the case. Against this assumption of power of the Federal government over the State government, New Hampshire filed two remonstrances, denying authority of the Federal courts to exercise jurisdiction in such cases.

The conflict intensified under Adams. The alarm created in various minds of the country by the advanced position taken by the Federal judiciary in assuming jurisdiction in cases decided in the highest courts of the States, was augmented by the policy of the national Administration under the elder Adams. The notorious Alien and Sedition enactments by Congress were the occasion for that alarm. In June, 1798, the time required for the naturalization of an alien was made fourteen years, and five years after declaring his intention. Seven days later the first Alien Law was enacted. It provided that the President of the United States shall be empowered to "order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government of the United States, to

depart out of the territory," etc. Further provisions were made to enable the President effectually to execute the law.

In the following July the Alien Enemy Act was passed, giving the President ample power to deal with citizens of a foreign country residing within the United States, at the time of a war with such country.

On the 14th of July the famous Sedition Law was enacted. It provided against any conspiracy to oppose the enforcement of any law of the nation. It further made it a punishable offense to "write, print, utter or publish any false, scandalous, or malicious writings against the government, either House of Congress, or the President." Such offense was made punishable by imprisonment not to exceed two years and a fine not to exceed two thousand dollars.

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The difference a constitutional one. These laws were opposed by the Jeffersonian followers as open violation of the spirit, if not the letter, of the Constitution. They insisted that the Alien Act was in violation of the Bill of Rights which guaranteed freedom of the person and trial by jury. They declared that the Sedition Law nullified the most sacred right of free speech, guaranteed by the Constitution, which declares in its first article of amendments that Congress shall have no power to make any law to abridge the freedom of the press or of speech.

They reminded the Administration that the insertion of such a guaranty was the condition upon which the Constitution was ratified by many States and without it the instrument could not have been ratified. They asserted that such unwarranted stretch of authority proved that all their fears entertained in the past were justified by the events of a single administration, that the inherent tendency of power to abuse was so strong that within the briefest period it had extended itself to the hurt of both the citizen and the State in open violation of the clearest principle of the Constitution and in the face of the loudest protests of the friends of liberty and good government. It should be remembered that Hamilton did not approve of these measures of the Administration.

Origin of the Virginia and Kentucky resolutions. These laws were the occasion for the action of the legislatures of Kentucky and Virginia, in adopting the famous resolutions which bear the names of the States adopting them. In November following July when the obnoxious laws were passed, the Kentucky legislature passed a series of resolutions, mainly written by Thomas Jefferson, setting forth the relations between the State, as a State, and the Federal government. The eighth section of the Jefferson draft is important in revealing his theory. After a clear and concise statement of the relation existing between the two authorities, he declares "This commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently to unlimited power, in no man nor body of men on earth." He further declares, "When powers are assumed which have not been delegated, a nullification of the act is the right remedy . . . That every State has the right in cases not within the compact to nullify of their own authority all assumption of power by others within their limits. That without this right they would be under the dominion, absolute and unlimited, of whatsoever might exercise this right of judgment for them." This advanced position taken by Jefferson created wide excite-

ment, and bitter criticism from the friends of the Administration.

Substance of the Virginia resolutions. Within a month the Virginia legislature put itself on record on the same question by adopting the Virginia Resolutions, written by James Madison. The author of these resolutions was rightly called the "father of the Constitution"; hence the special interest attaching to them on so important a question. Madison declared a firm intention to defend the Constitution of the United States and the constitution of the State of Virginia against every aggression. He pledged all the powers of the assembly of the State to maintain the Union of the States. He declared that the government is the result of a compact, and its powers are limited by the grants enumerated in the compact. He deplored the tendency in the Administration to overstep its authority, and protested against the "alarming infractions of the Constitution" in the cases of the Alien and Sedition Laws. He justified the adoption of the resolutions in view of the State's position in requiring the adoption of a Bill of Rights as a condition for ratification of the Federal Constitution.

It will be observed that Madison did not take the advanced position of Jefferson. There is no inference that the primary allegiance is to the State, but rather to the nation. Nullification as a remedy has no place in his mind. State Sovereignty is not claimed. However, the right of the State to sit in judgment upon the constitutionality of a Federal law is clearly declared. The State's remedy for an unconstitutional law was confined to "necessary and proper measures" to maintain the authority, right and liberty of the State and the people.

These resolutions were transmitted through the governors to the several States of the Union, with the request to consider the resolutions in the light of current tendencies.

Attitude of the States toward them. Delaware was the first to reply to the Virginia Resolutions. She considered them as "very unjustifiable interference with the general

government and constituted authorities of the United States, and of dangerous tendency and not a fit subject for further consideration of the general assembly."

Rhode Island was the next to reply, declaring that the Constitution vests in the Supreme Court of the United States the authority to declare whether a law is unconstitutional, and further that the Alien and Sedition Laws were "promotive of the general welfare of the United States."

Massachusetts replied in an elaborate document denying the authority of any State to call into question the constitutionality of a Federal law, and pronounced approval of the Alien and Sedition Laws.

Pennsylvania declared it her belief that such resolutions are "calculated to excite unwarrantable discontent, and to destroy the very existence of our government, and they ought to be, and hereby are rejected."

Replies were sent to Virginia by New York, Connecticut, New Hampshire and Vermont, all refusing Virginia's request to unite against the government's policy.

Replies of the same tenor were generally sent to Kentucky. It is quite singular that all the States replying were from the Northern section of the country, except Maryland. The States of South Carolina, North Carolina and Georgia took no action. These facts tend not only to identify Jefferson with the State Sovereignty theory, but also to sectionalize that theory.

The Jeffersonian theory identical with the Southern theory. The growth of the Virginia theory in the Southern country can be accounted for on a rational basis, while the growth of the Massachusetts theory in the Northern country can as easily and as rationally be explained. The facts show, nevertheless, that not infrequently the ruling party in the North has adopted the Virginia theory. This, however, has been at times of intense party feeling, and under protest that their Federalist views had not been abandoned.

The first symptoms of party machinery. Between 1801 and 1803 the county and township political organizations were effected in most places of the middle States. Prior to the election of Jefferson the situation in both parties called for organization. The attitude of Hamilton toward Adams was destined to effect factional disorganization among the Federalists. The activity of the Jefferson followers was destined to unify political action, and the campaign which led to the selection of Burr as Jefferson's running mate placed the latter in the front as one of the astute politicians of the country. The defeat of Adams was the occasion for a change of administration from the Hamiltonian to the Jeffersonian theory. This was the first opportunity for the Executive to assert his party privilege. This opportunity was afforded in the treatment of the offices. Washington had observed certain rules in his appointments. At least five elements entered into his consideration of appointments: (1) Fitness; (2) geography; (3) past services; (4) previous experience; (5) little political bias. As between the fit and the unfit he refused to consider the latter, no matter what his political views might be. If an appointment was to be made, and a desirable applicant was found in a section of the country which did not have its proportion of the offices, such applicant would be chosen, if other conditions permitted. He avoided party bias. If he ever showed any, it was toward the friend of the Constitution as against that of the old system, which conduct, of course, was justifiable.

Early removals from office. In the matter of his removals he acted from causal, not political, reasons. Washington made twenty-three removals, six military and seventeen civil, during his term of office. Adams made twenty-seven — twenty-one of which were civil — during his administration. When Jefferson came to the presidency there were, in all, four hundred and thirty-three offices filled by appointment. He removed one hundred and twenty-four; forty of which were

"midnight judges," twenty-four collectors, and ten marshals. His letter to Robert Livingston revealed his desire to secure in the major offices men of high rank who possessed the confidence of the people. The three Republican factions in New York, led respectively by Livingston, Clinton, and Burr, gave him much concern. Here his procedure indicated that he desired to reward his political friends. The general policy of Jefferson relative to the offices might be summed up as follows:

(1) Most of the civil officers were Federalists.

(2) In the case of vacancies, he decided to appoint Republicans until that party had a due proportion.

(3) In the case of "midnight judges," he desired to rectify the error in the best possible manner.

(4) Some changes in the marshals he declared should be made. His laconic statement, "None resign and few die," referring to appointive officers, throws some light upon his attitude toward the offices.

Jefferson's theory of removals compared with Jackson's. It is not to be denied that Jefferson did introduce the principle of rotation in office, and that he did make removals for political advantage, on the ground that the people had pronounced in favor of his theory as against that of his opponents; and further that he was made responsible for the inauguration of that theory which in his mind justified the selection of men of his political faith.

To the Republicans, and especially to Jefferson and Burr, the country owes the effective steps toward party organization. The years just preceding the election of Jefferson saw unusual activity in local communities. The want of local organs in the form of newspapers was remedied by a system of conferences and by communications by correspondence. By these methods the entire country was awakened. Local organizations were effected. Their influence was immediately felt throughout the country, and especially in Pennsylvania,

New York and most of New England; even in ultra-Federalist Massachusetts. By the time of the second election of Jefferson in 1804, these organizations were enabled to carry every State in the Union, except Delaware and Rhode Island, for the Republican candidate. Party spirit was at high tide. Party feeling had reached that stage where every measure was discussed with bitterness, and was allowed to take on a party coloring. Even the impeachment trial of Judge Samuel Chase, of Maryland, a Federal district judge, developed into a partizan issue.

Third party. The controversy with Spain over Western Florida embarrassed the Administration and led to the breach between Jefferson and John Randolph, of Roanoke, the recognized leader of the House and chairman of the committee to which the matter was referred. The followers of this eccentric leader, whom Benton said was the "political meteor of Congress for thirty years," were nick-named "Quids," from *quid tertium*, a third something. This breach which amounted to little was evidence of the strength of the party in power and the weakness of the party in opposition.

Influence of the war. The approach of the war cloud between this government and Great Britain, with the anti-English party in authority at Washington, was fruitful occasion for bitter attacks upon the Administration. One of the measures which received unqualified condemnation from the dwindling opposition was the Embargo Act, which was nicknamed "Ograbme Act," which name was not far wrong. At this time the Jefferson party was in power in most of the States, including Massachusetts. The embargo policy struck home in commercial New England. However, the State under the Republicans resolved, "We consider the imposing of embargo a wise and highly expedient measure, and from its impartial nature calculated to secure to us the blessings of peace." The inevitable reaction came, and in 1808 the Republicans were defeated in the legislature. The legislature at

once instructed the Massachusetts delegation in Congress to procure the repeal of the act. Congress, instead, replied by the enactment of a stringent enforcement law. Then followed the famous protest of Massachusetts, which has been wrongly quoted as declaring the principle of State Sovereignty. On the contrary, it declared the principle of National Supremacy. However, the reply of the Federalist House to the Republican governor's criticism of the attitude of certain sections of the State in their town meetings, clearly asserted the doctrine of the State's right to judge of the constitutionality of a Federal law. The House in its answer declared that "We are unwilling to believe that any man can be weak or wicked enough to construe a disposition to support that Constitution and preserve the Union by a temperate and firm opposition to acts which are repugnant to the first principles and purposes of both, into a wish to recede from the other States . . . The legislature and people of the State of Massachusetts ever have been and now are firmly and sincerely attached to the Union of the States, and there is no sacrifice they have not been, and are not now willing to submit to, in order to preserve the same, according to its original purpose."

New England's attitude. The resolutions of the two branches of the Massachusetts General Assembly on the Enforcement Act of Congress came dangerously near the Calhoun theory of nullification. They resolved that in the opinion of the legislature the Enforcement Act of Congress is "in many respects, unjust, oppressive, and unconstitutional, and not legally binding upon the citizens of this State." They did not declare openly the positive right to nullify, but they did assert that the law was not binding. It was recommended that the State should co-operate with other States in all legal and constitutional measures to secure necessary amendments to the Federal Constitution to obtain commercial protection. An examination of the action of the State will show a striking similarity to that of Kentucky in the adoption of the Kentucky

Resolutions. The latter made less profession of allegiance to the Union, but went no further than did Massachusetts in declaring a Federal law unconstitutional and therefore not binding.

In January, 1809, the House of Representatives of Delaware took a position on the point in dispute. A strenuous effort was made to secure an endorsement of the national Administration but it was defeated, and the House declared that the Enforcement Act was "an invasion of the liberty of the people, and the constitutional sovereignty of the State government." Without defining State Sovereignty, it further declared that "they will use the remedy pointed out by the Constitution for the evils under which they suffer, rather than jeopardize the Union of the States and the independence of their country by an open opposition to the laws."

Connecticut took an advanced position and declared it to be the duty of the legislature, in such a crisis, vigilantly to watch over and vigorously to maintain the powers not delegated to the United States but reserved to the States respectively, or to the people. It further declared that "a due regard to this duty will not permit this assembly to assist, or concur in giving effect to the aforesaid unconstitutional act, passed to enforce the embargo." It also commended Governor Trumbull in declining to designate persons to carry into effect by the aid of military power the aforesaid act.

Rhode Island declared the Enforcement law, "in many of its provisions unjust, oppressive, unconstitutional, and tyrannical;" and while cautious not to infringe upon the Constitution and delegated powers and rights of the general government, the general assembly should "be vigilant in guarding from usurpation and violation those powers and rights which the good people of this State have expressly reserved to themselves and have ever refused to delegate."

History repeats itself. The close of the administration of the elder Adams was disturbed by the agitation over the Ken-

tucky and Virginia Resolutions which stand as the pronouncement of the Virginia theory of politics. At the close of his administration Jefferson was embarrassed by a similar attitude of the New England opposition to his policy of embargo. Massachusetts made a pronouncement of the relative rights of the government and the States, which did not pretend to enter into the theory of Federal government as was done by the two Southern States, but which did call in question the constitutionality of a Federal enactment. This attitude was seconded by Delaware, Connecticut and Rhode Island. All the other States, save New Hampshire, were in the hands of the Republicans.

United States against Peters. The most acute stage in this conflict between the two authorities was reached in 1808, in the famous case of United States against Peters. This case, in one form or another, was before the courts for thirty years. It grew out of an appeal from the judgment of a Pennsylvania court to the Committee of Appeals of Congress. The decision of the Pennsylvania court was reversed, but the State authorities succeeded in preventing the satisfaction of the judgment on the ground of want of jurisdiction of the appellant court. Application was made to the Supreme Court of the United States to command the execution of judgment. Chief Justice Marshall granted it, declaring that

> If the legislatures of the several States may at will annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery, and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals.

The attempt of the United States officer to serve the writ was resisted by the State militia. Finally, the State receded far enough to allow the national decree to be enforced. The Pennsylvania legislature recommended an amendment to the Constitution providing against a recurrence of the unfortunate

circumstance. This recommendation was sent to the several States for concurrence. Eleven States replied, each one repudiating it. In the list were seven Southern States, including Kentucky and Virginia. The strongest position against the plan was taken by Virginia, which is significant in view of that State's former position. Her resolutions in reply declared that the Supreme Court was the best qualified body to decide such matters that could be erected; that the Judiciary was the least dangerous of the three departments; that the Judiciary held neither the purse nor the sword and had to depend upon the Executive for the enforcement of its decrees. She therefore resolved to disapprove of the proposition to amend the Federal Constitution to limit the powers of the Judiciary.

Pennsylvania, chagrined at the attitude of the other States, resolved by an almost unanimous vote

> That the sovereignty and the independence of the States, as guaranteed by the Constitution of the United States, ought to be most zealously guarded, and every attempt to depreciate the value of those rights, and to consolidate these States into one general government, is hostile to the liberty and happiness of the people, and merits our most decided disapprobation.

It further justified the efforts of the governor of the State in his efforts to sustain the "rights and sovereignty of the State, under the act of 1803."

Democratic Pennsylvania. There had ever been a strong Jeffersonian element in Pennsylvania, which watched with vigilant care the rights of local self-government. As far back as the contention over the Presque Isle case, when Governor Mifflin requested of the general government a justification for the suspension of positive law in the State of Pennsylvania by executive advice, the jealousy of the State had been aroused. The governor remarked in reference to the above suspension, "I could not think that he (the President) would deliver an opinion to the executive of a State which it might be thought indelicate to disregard and illegal to adopt."

In the famous Whisky Insurrection in western Pennsylvania, the same governor called in question the legality of the President's act calling out the militia to suppress the insurrection. However, his long harangue was on a matter of fact rather than of law.

On the expiration of the charter of the United States Bank, opposition to the rechartering of it developed in Pennsylvania as in other States. Pennsylvania was one of the first to protest against a renewal of the charter. On the 11th of January, 1811, the State declared itself as follows upon the sovereignty of the State:

> The act of union thus entered into being to all intents and purposes a treaty between sovereign States, the general government by this treaty was not constituted the exclusive or final judge of the powers it was to exercise.

It asserted the right of the States to apply the remedy for an unconstitutional act of the Federal government. It further declared that the incorporation of a bank to do business within the limits of the State without the consent of the State is unconstitutional.

At this time the Federal theory (sometimes called the Virginia theory, and sometimes the Jeffersonian theory) was dominant in the land. The Pennsylvania House of Representatives went farther in its advocacy of it than the Virginia Resolutions; but the Senate refused to go so far.

Jealousy between power and freedom. The second war with England, as before mentioned, was the occasion for studied opposition to the policy of the Administration. When at last the war party succeeded in forcing the Administration to declare war (June 18, 1812) Madison, the man who wrote the Virginia Resolutions, now the Chief Executive of the nation, made requisitions upon the States for the State militia. Governor Strong of Massachusetts refused to make the call until he was informed of the legality of the requisition. He admitted that the President had the authority to call the

militia in cases of "insurrection and invasion," but desired to be instructed on two points: (1) Who was to determine whether the exigency for the requisition exists; the nation or the State? (2) Can any other national officer command the militia when in the service of the government, except the President? The governor informed the Secretary of War that he had applied to the Supreme Court of the State for the desired information. Judges Parsons, Sewall and Parker signed an opinion that the fact of the existence of the exigencies for calling out the militia is to be determined by the commanders-in-chief of the militia of the several States. They decided on the second question, that the Constitution did not warrant any officer of the army of the United States to command the militia.

Madison, the President, is not Madison the legislator. This attitude on the part of some of the States called out a special reference to the matter by President Madison, who, after criticizing the conduct of Massachusetts and Connecticut in their refusal to call out their militia, observed:

> It is obvious that if the authority of the United States to call into service and command the militia for the public defense can be thus frustrated, even in a state of declared war, they are not one nation, and must have recourse to permanent military establishments, which are forbidden by the principles of our free government, and against the necessity of which the militia were meant to be a constitutional bulwark.

Here again the tables are turned. The author of the Virginia Resolutions, which were intended to place a limit upon the Federal prerogative, finds himself in the position of responsibility, and compelled to exercise the prerogative required for effective administration. Before, it was Virginia protesting against Massachusetts; now it is Massachusetts protesting against Virginia. Any political theory may serve as a basis for party policy, but not be competent for practical administration. In administration, theory must, as a rule, give way to practise.

State rights tendencies in New England. Connecticut, which in 1798 repudiated the State Sovereignty theory, now, in 1812, declared —

> That the State of Connecticut is a free, sovereign, and independent State; that the United States are a confederacy of States; that we are a confederated and not a consolidated republic.

The State declared it the duty of the governor to maintain the rights and privileges of the free, sovereign, and independent State, as well as to support the Constitution of the United States. Rhode Island and Vermont followed the lead of Massachusetts and Connecticut. In Vermont the situation reached a critical stage. When the legislature endorsed the governor in his refusal to call out the militia, the governor commanded the recall of that portion of the militia ordered from the State and placed under the command of the United States officers. Congress ordered the governor to be tried for treason. Massachusetts endorsed the conduct of the State. New Jersey and Pennsylvania condemned it in bitter terms. In all of these cases the States insisted that their devotion to the Federal Constitution was undiminished. They emphasized the distinction between the "Constitution" and the "Administration." They insisted they could only be true to the Constitution by repudiating the Administration.

The New England conspiracy. The most distinctive effort in the North tending to the Federal as against the national system is what is frequently referred to as the "New England Conspiracy." The names most frequently mentioned in connection with this event are Pickering, Griswold, Tracy and Plumer, with occasional mention of Josiah Quincy. Naturally the Federalists, who had inaugurated the new government and had held full control for its first decade of existence, worked themselves into the belief that the cause of American society depended upon their continuance in power. The mere suggestion that their opponents, led by a Democrat of the type of

Jefferson, might displace them, was heralded by them as fatal to society.

In New England, the citadel of Federalism, ominous threats were afloat. Much disunion gossip was heard. Timothy Pickering, Secretary of War under Washington, and later Secretary of State under Adams, saw in united New England the remedy for disintegrating Federalism. He declared that Massachusetts must take the lead; that Connecticut and New Hampshire would welcome it; that New York must be interested in some possible way; then Vermont and New Jersey would follow of course, and Rhode Island of necessity. Griswold of Connecticut, the most extreme member of the House of Representatives, felt that the three States still remaining Federalist should by legislative action take the initiative in calling a reunion of the Northern States. The Federalist leaders did not all agree to the advisability of such a course. George Cabot pronounced it impracticable, at the same time deploring the fate of the nation under the control of the "ranters of Democracy." He felt that a "separation was unavoidable when loyalty to the Union is generally perceived to be the instrument of debasement and impoverishment." The distinguished Judge Reeve wrote, "All I have seen and most I have heard from believe that we must separate." Griswold grew impatient at the lack of interest in the separation project on the part of some of the men who, as he urged, ought to be most interested in it. But such ill-advised efforts usually overleap the bounds of prudence, and thus it was in the abortive attempts of these Federalist leaders.

Its extent. The project was principally confined to a coterie of men, who, from their process of thinking, really believed that the end of government would appear with the inauguration of Democracy, a doctrine which they declared to be the sum of all unwisdom. Such an aggregation as this would naturally resort to many queer expedients to achieve their object. Every indication pointed to the party's hopeless

defeat in the nation. Even in its stronghold New England, its defeat was assured if recuperative measures were not immediately taken. The rank and file were torn to shreds by the ambitions of the leaders. The party united was superseded by factions at war. The supreme need of the hour was an aggressive leader, one who possessed both the power of party organization and personal magnetism.

Burr's position. Political exigencies pointed to Aaron Burr as the most available leader. As a political machine builder, and as a manipulator of the same, he had no equal in public life. As to personal magnetism his charms were hypnotic, both in private and in public life. As a politician he could espouse the Federalists' cause with little violence to his conscience. As the recognized leader of his party in New York, he held a commanding position in a most important State. As Vice-President under Jefferson, his conduct was such as to prove him not in sympathy with his chief. Under these circumstances he became the logical leader to win from the dominant party the disaffected. The situation excited the enthusiasm of the " conspirators " in New England and soon overtures were made to him. The deepest possible resentment was aroused in some, if not most, of the old time rank and file of the Federalist party. But nothing succeeds like success. In times of hopeless defeat an army will desert its general on the field of battle, and the ruling power will not only degrade, but court-martial and execute him. Hamilton was acceptable while he succeeded, but his transcendent qualities were at a discount in defeat. The argument which deposes such leaders in such crises, knows no consistency, no gratitude, and little wisdom.

Hamilton's position. Against the most strenuous efforts of Hamilton and his loyal followers, his party decided to nominate Burr, a Jeffersonian Democrat in theory but anything in practise, as the Federalist candidate for governor of New York. This act was in keeping with the avowed purpose

of some of the leaders to "make New York the center of the confederacy." Hamilton was the greatest opponent of the project. It is claimed that his opposition was due to the fear of being displaced as the leader of his party. This can scarcely be credited. Displacement by his rival would be distasteful in the extreme, but this can not be urged as the basis for his opposition to the fatal theory of Pickering and Griswold. His very mental organization refutes such a statement. His elaboration of political theory, which is abundant, is permeated with the very opposite view. His invaluable service in securing the ratification of the Federal Constitution and his passion for law and order preclude the possibility of such a basis for his action. His powers of persuasion were sufficient to prevent his party from committing itself to the fatal blunder urged by the separatists, but not sufficient to forestall their determination to name Burr as their gubernatorial candidate.

Result of the New York election. The election was held in April, 1804. Burr was defeated by Clinton whose majority was about seven thousand. Thus was taught one of the earliest lessons in partizan history, repeated often since in both State and Federal elections; namely, failure awaits the efforts of the party which bids more for the weakening of the opponent's ranks than for the strengthening of its own. To steal another's thunder sounds well as a political aphorism, but works ill in political practise. Nothing is more forceful in a campaign than a clearly defined policy backed by positive convictions.

Hamilton's aversion to Burr as a political leader was a powerful factor in the latter's defeat, and led to the challenge sent by Burr, the duel which resulted in the death of Hamilton, and the political eclipse of his rival, who henceforth became a fugitive, hunted like a beast. This tragedy put an end to the New England talk of separation. It died with the flight of its ill-fated figure-head. The death of Hamilton was

reasonably regarded as the falling of the main prop of national government. His death was universally mourned throughout New England. It unified the sentiment for which he stood as no other incident could. Hamiltonian theory received an impetus. Those of his party who had stood against him were now in political hiding. But the party never fully recovered from the stroke. It was the beginning of the end of Federalism, when the people saw only one party, which fact led Jefferson to say, "We are all Republicans."

New England not Jeffersonian. These isolated references to heads of factions and fugitive attempts of disaffected politicians, which reveal a spirit tending to dissolve the Union, should not stand for the mind of the majority of the people of the States in which such agitators were found. There never was a time in New England when the vast majority of the people were not believers in the national theory, as perhaps there never was a time when a majority of the people in the South were not strongly inclined to the Federal theory. John Quincy Adams, who was not a Hamilton partizan, was at the head of the Union sentiment in Massachusetts, and his standing reveals a potent element loyal to the national idea. The blunders of some of the Federalist leaders due to their fears, their foolish opposition to the measures of the administrations of Jefferson and Madison, and especially the wild schemes of the "conspirators," caused the rank and file to abandon, not Federalist principles, but the practises of Federalist leaders.

Her State rights profession exceptional. On the agitation for the admission of Louisiana, Josiah Quincy represented an element in his section when he declaimed against the admission of the State on the ground that it was not warranted by the Constitution. He counseled withdrawal from the Union by the New England States as the best means of protection against the disproportionate power of the South and West. This sentiment was not wide-spread, but was of the fugitive sort

found in every State on various occasions. The circumstance of a war, prosecuted by the Republican Administration, to the almost total destruction of commerce — the source of wealth — induced many individuals to threaten resistance; hence the seeming reversal of theory: namely, a Jeffersonian President adopting the Hamiltonian theory of strong central authority, against a Hamiltonian section adopting the Jeffersonian theory of the rights of the States.

On June 16, 1813, the general court of Massachusetts took strong ground on the Administration's policy of territorial extension, charging the Administration with unconstitutional usurpation. On the following June it again protested against the Administration's embargo policy, and reminded the President of his attitude in 1798 when he "led the legislature of Virginia into an opposition without any justifiable cause; yet it may be supposed that he and all others who understand the principles of our concurrent sovereignty will acknowledge the fitness and propriety of their asserting rights which no people can ever relinquish." The general court resolved that the embargo of 1813 was unconstitutional; that the people of the State have a right to be protected from unreasonable searches and seizures; that they have a right of protection in the enjoyment of life, liberty, and property according to law.

The attitude of the New England States in refusing to comply with the requisition of the President to call out the State militia, led the Administration to abandon the New England coast and thus compel the States to adopt their own methods of protection from invasion. The legislature of Massachusetts proceeded to make necessary provision for protection, by authorizing the raising of a military corps of ten thousand men. It also recommended a convention of the New England States in order that concerted action in defense from invasions might be assured. There was stubborn opposition to this convention in both Senate and House. The committee reported in favor of such a convention, giving its reasons, and

the report was adopted on October 15, 1814. Two days later the governor of Massachusetts sent out the call. It stated the object of the convention to be "to deliberate upon the dangers to which the Eastern section of the Union is exposed by the course of the war, and to devise, if practicable, means of security and defense not repugnant to their obligations as members of the Union." Another object was to consider the feasibility of calling a convention of all the States to amend the Constitution so as to secure equal advantages. The call closed with the following: "This legislature is content for its justification to repose upon the purity of its own motives, and upon the known attachment of its constituents to the national Union, and to the rights and independence of their country."

The Hartford convention. The convention met at Hartford on the 15th of December and continued in session until the 5th of January. Their sessions were behind closed doors. There were twenty-six delegates representing Massachusetts, Connecticut, Rhode Island, New Hampshire and Vermont. The convention organized by electing George Cabot chairman. It adopted a series of six resolutions, and recommended seven amendments to the Federal Constitution.

Its first resolution was that the States should adopt such measures necessary to protect the citizens from the operations and effects of all acts which have been passed by Congress containing provisions subjecting the militia or other citizens to forcible drafts, conscriptions, and impressments not authorized by the Constitution of the United States.

The second referred to the organizing of the militia for the purpose of repelling any invasion made by the public enemy.

The third made application to the government of the United States that each State be permitted to provide for its own defense; and a reasonable portion of the taxes raised in said State to be applied to such defense.

The fourth referred to amendments as follows:

1. That congressional representation be based upon free persons, including those bound to service for a term of years, and excluding Indians not taxed.

2. That two-thirds of both Houses shall be necessary to admit a new State.

3. That embargoes shall be limited to sixty days.

4. That two-thirds of both Houses shall be necessary to interdict commerce.

5. That two-thirds of both Houses shall be necessary to declare war.

6. That members of Congress and Federal officers must be natural-born citizens.

7. That the President shall be ineligible to succeed himself. No State can furnish two Presidents in succession.

The fifth resolution declared in case of the failure of the foregoing, and the States were left without protection, another convention shall be called to meet at Boston with necessary powers to act as the crisis may dictate.

The last resolution provided for a second meeting of the convention if necessary, by appointing a committee with instructions.

These resolutions were adopted by the legislatures of Massachusetts and Connecticut only. The proposed amendments were repudiated by Vermont, New York, New Jersey, Pennsylvania, Virginia, North Carolina, Tennessee, Ohio and Louisiana. The unfortunate feature of these resolutions was their ambiguity. Strenuous efforts have been made by sincere men to show that Secession had no place in them. It is asserted that nullification was not endorsed; that the procedure was in accordance with an expressed right guaranteed by the Constitution in the very first clause of the Bill of Rights: namely, the right to assemble and petition the government for the redress of grievances. However, the fair mind must read a spirit of defiance in at least one of the resolutions.

The proceedings of the convention were at once published. The treaty of Ghent, officially ending the war with England, had been signed at least two weeks before the adjournment

of the Hartford convention. An attack upon the war policy of an Administration is an attack against the strongest national passion. No issue can be made more popular than that of war, when an adequate cause is involved; and especially is this true when the war is against a foreign nation. The mere criticism of the prosecution of a war is resented by the people. Every political party in this country has learned this fact, and many leaders have felt it.

Its general effect. The Hartford convention was the death sentence of the Federalist party. Its conspicuous blunders in the opposition to the extension of our boundary line in the purchase of Louisiana, its flirtation with Burr, its inconsistent opposition to the embargo legislation, its opposition to the war and finally the Hartford convention, — were marked symptoms of speedy dissolution. The election of 1816 gave Monroe every State except Massachusetts, Connecticut and Delaware, and the election of 1820 the vote of every State except the single ballot of Plumer, of New Hampshire, who questioned Monroe's fitness.

We shall see in the next chapter that the elimination of party lines did not eliminate political theory.

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CHAPTER III

THOMAS JEFFERSON, THE REPRESENTATIVE OF LIBERTY IN GOVERNMENT

The philosophy of Jefferson. Leadership comprehends many talents. Not infrequently the strongest, at least the most pronounced, element, is personality. This, as a factor of leadership is not abiding. It is as spasmodic as its duration is brief. It must be reinforced by a sane theory in the advocacy of which the personality may be employed. The leadership of Jefferson must be viewed in the light of his political theories. The one dominant note in his philosophy is liberty. This word comprehends most nearly his philosophy. Its realization was his ambition, its embodiment in legal enactment, his career.

Perhaps he was less positive in his nature than negative. This was due to his well defined fears of the normal tendencies of power to deny needful freedom. There is a clear note in most of his sayings which reveals a distrust. He fears not the people as he does the government. This is due to the nature of government, which seemed in a degree to be incompatible with the exercise of requisite liberty. This fear colored most of his utterances.

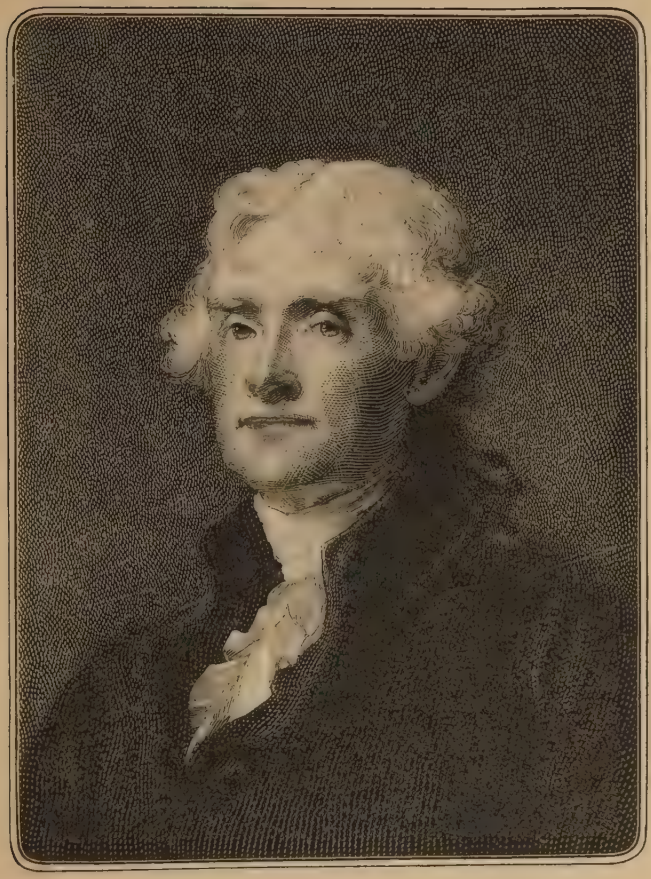
Sources of his philosophy. His was the freedom of the hills, of the expanse of country, of the open sky. He loved the country as distinguished from the city. He urged the pursuit of agriculture as against manufacturing. He expressed a hope that our people would remain tillers of the soil. He would

be glad to see the workshops remain in Europe. He thoroughly believed that "cultivators of the earth make the best citizens." He declared them to be the most vigorous, the most virtuous, and the most independent, since "they were tied to their country, and wedded to its liberty and interests by the most lasting bonds." He declared to John Jay that "artificers were panderers of vice and the instruments by which the liberties of a country are generally overthrown." In referring to the scourge of yellow fever he thought its presence providential as the disseminator of the people into the rural regions, away from the great cities, which were breeders of immorality and dangers to the health and liberties of the people. The necessary restraint which pertains to the city was an evil in the degree that it denied certain enjoyment of liberty in the occupant, and in that degree prevented a healthful growth of the citizen.

Forms of its expression. The intensely practical citizen of his country can not understand why the great Democrat would choose as his residence a small mountain at least six hundred feet above the surrounding country. It appeals to his practical sense as a great inconvenience in location, which it was. However, its outlook far outweighed the inconvenience of approach, to the citizen whose very breath was freedom. Here his view was disturbed only by the distant Blue Ridge nearly fifty miles away. It was an ideal spot for the reveries of the apostle of liberty.

The growth of the commercial spirit in New England at first induced him to pity the Yankee and later to dislike him quite generally. In advising a friend on the education of his child, he urged a Southern college, such as that at Columbia, South Carolina, rather than a New England institution, upon the grounds of fears of distorted views of life so prevalent in that section.

An early experience with arbitrary rule. His experience induced a spirit of fear of governmental restraint and very



THOMAS JEFFERSON

naturally accentuated the importance of the largest expression of liberty in the citizen. As he viewed it there was nothing to fear from the people of agricultural Virginia, but much from the intrusions of royal governors in their midst. This belief was intensified by an accident in his career as a legislator. He took his seat as a member of the Virginia legislature in 1769 with Washington. On the third day of the session four resolutions were adopted, declaring against taxation without representation, the transportation act, urging co-operation of the colonies for redress of grievances, and a formal remonstrance to the King. On the fifth day the royal governor dissolved the legislature. That the sovereign will of the people of a colony could be set aside at the caprice of a foreign governor, who knew but little of the truest interests of that people and seemed to care less, was incompatible with the character of this people. Here he received one of the earliest impressions of the evils of arbitrary government.

A change in his admiration. Although by cultivation and education Jefferson was an admirer of the English government he was easily stirred at the sight of any symptom of arbitrary rule. As a law student at Williamsburg he followed Patrick Henry to the old court-house where Henry was destined in a single speech to set the Old Dominion all agog with excitement. Young Jefferson standing in the doorway of the crowded house was thrilled by the voice of the orator as he poured forth torrents of eloquence in opposition to the Stamp Act. The march of events was so rapid that in a single decade he had passed from an ardent admirer of the English system to its chief prosecutor, who drew up the indictment of George III for his crimes against his people.

Jefferson as a public servant. His public career stretched over sixty-one years, thirty-nine of which he actually spent in office. His public services comprehended those of legislator in the House of Burgesses, in the Continental Congress, in the Virginia Assembly, and in Congress under the old confedera-

tion. His work as an administrator included two years as governor of Virginia, Secretary of State one term, Vice-President of the United States one term, and President of the United States two terms. His diplomatic service included that of minister to France, and one term as Secretary of State. He included in his public service his labor for the University of Virginia.

A recital of what he regarded as his best service to the country, will indicate his estimate of liberty when enjoyed by a people.

His first great service was his part in the drafting of the Declaration of Independence. The other members of the committee were, Benjamin Franklin, John Adams, Roger Sherman, and Robert R. Livingston. As is well known, Jefferson's skill with the pen recommended him at once as the man to write the document. He received a few suggestions and consulted freely with Adams and Franklin, to whom he submitted the draft before he reported it to the whole committee.

His part in the Declaration of Independence. While it is admitted that Congress made some minor changes in the original, it is true that its form and substance are largely Jefferson's. If the instrument is read with the view of determining its dominant note, it is easy to detect his estimate of liberty. He declares that man is endowed with certain rights which can not be taken from him. He enumerates these rights as *life*, *liberty*, and *pursuit* of *happiness*. Here we have personal liberty, civil and political liberty, and economic liberty. He asserts these to be the end of existence and their security the purpose of government. And as the end is superior to the means, he announces that governments must subserve these ends, otherwise they must be altered, or abolished for such as will satisfy the ends. He thus places the liberties of the people above the privileges of the government, and boldly declares that the right to govern must come from the consent of the governed. He asserted that while

governments should not be changed for light and transient causes, yet all history showed that people suffer evils as long as they are sufferable rather than to right them. Herein lies the key to the secret of his political theory which was soon to take such strong hold upon the new republic.

Promulgation in statutory enactments. His will be a busy life in the interest of what he calls the liberties of his people. He said he proposed the disestablishment of the Church in the interest of religious freedom. His efforts to secure this consummation ran through a series of years from 1776 to 1785. To Jefferson Virginia owes the enactment of very important measures in the establishment of specific laws securing the liberties of the citizen, namely:

1. The destruction of the entailed estate.
2. The prohibition of the importation of slaves.
3. The abolition of the system of primogeniture.
4. The establishment of the rights of expatriation.
5. The apportionment of crimes and their punishment in accordance with a more enlightened humanity.
6. The disestablishment of the Church, and the recognition of freedom in religious worship.
7. The establishment of free English schools.

Disestablishment. With the army in the field striking for political liberty it was thought an opportune time to prune the tree growing on the homestead. The first branch to which the knife was laid was the Church establishment. Jefferson insisted that it was unfair to compel dissenters to support any particular church, but that they should be left to assist the church of their choice. He also argued that any church would be profited by voluntary support. This principle was finally enacted into law in 1779. Entire religious freedom was accomplished in his State in 1785. This consummation was regarded by him as one of the greatest achievements of his life.

Laws of descent. Kindred to this was the abolition of restrictive land laws prevalent in England which had been

imported from the parent country. By this system the estates could not be alienated from the possessor to one not related to the possessor as an heir. This was in the interest of the landed aristocracy. It was the method by which such aristocracy was continued, in securing the integrity of the great estates by forbidding their division. Another regulation by law in the interest of the aristocracy was that called *primogeniture*. This undemocratic scheme caused all the estate of the ancestor to pass to the oldest son to the exclusion of other sons and all daughters. This was so averse to Jefferson's way of thinking that he early began his assaults upon it. While a hereditary monarchy might excuse it, he was sure it was entirely indefensible in America. His nature resented any law which was made in the interest of the few to the detriment of the many. His efforts resulted in the adoption of the equal distribution system, which is now universal in the States, and has proved its utility.

It was but natural that such a nature as his would be aroused by the rigidity of the criminal code of his State, and the various restrictions upon the citizens in their coming and going to and from the State. His attention was soon successfully directed to ameliorating these inequalities, all in the interest of the liberties of the many, rather than the privileges of the few.

Jefferson as a slave-holder. It is asserted that these evidences of his advocacy of liberty are incompatible with his life as a slave-holder. It might appear so until his attitude toward both the slave and the slave institution is understood. His treatment of slaves was exemplary. No cruelty was tolerated upon his premises. No separation of families, no unjust punishment, no conveyance of aged negroes too old to be useful.

In reference to his attitude toward slavery as an institution, his views were openly expressed in opposition to its continuance. Jefferson's original draft of the Declaration of In-

dependence contained a severe indictment against the Crown for fastening the system of slavery upon the unwilling colonies. This was later stricken out in deference to certain friends of the institution in the South. Two years later he secured the enactment of a law in Virginia forbidding the further importation of slaves into the State. The Ordinance of 1784, the precursor of the more famous Ordinance of 1787, was written by Jefferson. It provided for the abolition of slavery in the Northwest Territory after the year 1800. This wish of Jefferson's was defeated by but one vote. It evidently prevented a consummation much desired by him as evidenced by a striking remark of his that "we must wait with patience the workings of an over-ruling Providence and hope that it is preparing the deliverance of these our suffering brethren. When the measure of their tears shall be full, when their groans shall have involved heaven itself in darkness, doubtless a God of justice will awaken to their distress." In this connection that oft-quoted expression of his, found in his Notes on Virginia, will be recalled, in which he said, "I tremble for my country when I reflect that God is just, and that his justice cannot forever sleep." He here asserted that the abolition of slavery was possible, and every plan should be advocated, and every experiment made, which would assist in its ultimate accomplishment. His views upon slavery were ever those of a man whose dominant passion was liberty. This passion led him at times to utter sentiments at war with reason. One of the most outspoken heresies he voiced was his reference to the Shays rebellion in Massachusetts in 1787. Far from criticizing it, he exclaimed, "God forbid that we should be twenty years without a rebellion. . . . The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants." Such utterances cannot be accounted for on any other basis than that of fears for the liberties of his people.

Influence of France upon his theory. His residence in France was destined to stimulate this passion. His admira-

tion for Lafayette personally, and his cause politically, as well as his well known sentiments of democracy, induced the French Democrats to seek his counsel and advice. He was wholly in sympathy with the claims of the agitators for a government of the people in France. While he was in this atmosphere the Federal Convention completed its work in the framing of the Constitution. It was but natural that the great Democrat would be dissatisfied with the results. He defined his objections in a letter to Madison, the father of the Constitution. All his objections are negative. Not what the Constitution provided, but rather what it failed to provide, gave rise to his objection. Upon this basis is explained his contention for the strict construction of the Constitution. His fear of the tendency of authority to exceed its rightful limits induced his claim for expressed power only, to the exclusion of implied power in the Constitution, and gave a foundation for a political theory and policy.

Rational explanation of his theory. In the difference of interpretation is found the rational basis for the two parties in the government. Tersely expressed it is the contention between the adherents of central government on the one side and those of local self-government on the other. The one drifts toward too large exercise of authority on the one side, while the other leans toward too much liberty on the other side. The apostle of liberty would naturally fret under every extension of authority. Party difference took form in Washington's administration. The occasion was the inauguration of the financial scheme of Hamilton. Jefferson's keen eye easily discerned the centralizing tendencies of the great Secretary of the Treasury. His suspicions were reinforced by subsequent events, and party spirit was a rational outcome. From an active antagonism to Hamilton's policy to reluctant support of Washington was but a step. This position reached, it might have been expected that Washington's position of neutrality would be a grave disappointment to Jefferson.

Jefferson and Washington. While open rupture was not at once reached, it amounted to that when the President urged suppression of the "Self-created Societies." Jefferson was certain he saw in this recommendation the strong hand of oppression, the enemy of the freedom of speech, of the press, and the right of assembly. It was a question whether his admiration for, and his confidence in, his chief were sufficient to prevent an open rupture. The strained relations were not relieved by the signing of Jay's treaty which was interpreted by Jefferson as a defeat for the Democratic elements of France.

Progress of partizan feeling. By the close of the second administration, party spirit was well defined, between adherents of liberty on the one side and authority on the other. While these two terms were never discussed as distinct issues, their contention served as the rational basis for party dispute upon whatever issue came up for discussion. If there was opposition to the assumption of the State debt, it arose from the fear that the rights of the State were in jeopardy. If there was opposition to the establishment of a National Bank, it emanated from a like fear that it would become an engine of despotic power in the hands of government officials. If there was a French party in the country, it had its rise in sympathy for liberty's contention with its enemy in a foreign country. If a contention arose over the suppression of the Democratic societies, their defenders took a position not for the admiration of the leaders, but in the interest of free speech and the right of assembly. If the keenest resentment was awakened by the enactment of the restrictive measures, such as the Alien and Sedition Laws, it arose not because such measures were wholly unwarranted, but because free speech and personal liberty were apt to suffer from them.

Jefferson in power against Jefferson out of power. The student of the Jefferson theory, as represented in Jefferson's administration from 1801 to 1809, faces a conflict between

theory and practise. The course of his administration tended away from liberty to authority; away from the Federal to the national theory of government. Much he did was forced upon him by the logic of events. He wisely permitted it to determine his course, although it cost him the open charge of inconsistency. While his theory suffered sorely at his own hands, there is no evidence that he ever changed his mind upon the cardinal doctrines of government. He still believed that the best government made the least show of authority. In referring to his intention to appoint his political friends to office, he said, "We do not mean to leave arms in the hands of our active enemies, yet I hope our wisdom will grow with our power, and teach us that the less we use our power, the greater it will be." Yet when events which he could not easily control argued that he should use the power, he did so with the alertness of a dictator.

Was this an abandonment of his theory? At the very time he was enlarging the powers of the general government, he was warning the people of its dangers. "What has destroyed the liberty and the rights of man in every government which has ever existed under the sun?" he inquired. "The generalizing and concentrating all cares and powers into one body," was his answer. He further declared, "It is not by the consolidation or concentration of powers, but by their distribution that good government is effected." He had implicit faith in the wisdom of the many. He believed there was safety in the counsel of the multitude. In his first inaugural address he said, "Absolute acquiescence in the decisions of the majority is the vital principle of the republic, from which there is no appeal except through force, the vital principle and immediate parent of despotism." That the people might be frequently heard he favored short terms of office, and was ever an opponent of life tenure even in the Judiciary. He believed it to be a breeder of grave evils to the people. He expressed grave fears that the want of a limit to the number of times a

President might succeed himself, might favor the life tenure in that office. He recommended an amendment to the Constitution providing for but one term of seven years.

State University of Virginia. It is not difficult to cite cases which ignore these political opinions. They are numerous in his writings and doings. Yet his entire career was a commentary upon the value of freedom to a people. His proudest title was "father of the State University of Virginia." Its planting and its early growth were due to his efforts. He selected for its motto, "And ye shall know the truth, and the truth shall make you free." Speaking of the value of an education he said, "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man." Thus the passion of *freedom* or *liberty* is supreme in his motive in the service for an educational system for his State.

Intelligibility of his theory. It is only when his estimate of the value to a people of liberty in government is understood that Jefferson's theory is intelligible. That will enable his countrymen to understand his instructions to his family relative to his epitaph. In it can be read the liberty which comes from the government which is built upon the Declaration of Independence; which recognizes that religious liberty secured by the statutes of Virginia; and that liberty, the greatest of all, which is assured by a wise system of education. Whatever else may be said of Jefferson, he must be recognized as the champion of the rights of the people as against the privileges of the few. To this issue he addressed himself. He disliked titles with a conviction that approached hatred. He expressed the hope that all terms of discrimination would disappear from us. His effort in the abolition of entailed estates and primogeniture made him the special target for abuse at the hands of the aristocracy. However, his loss of that support was compensated by the gain of the vastly larger element which had come into their rights by virtue of his activity. In like manner, while he lost the support

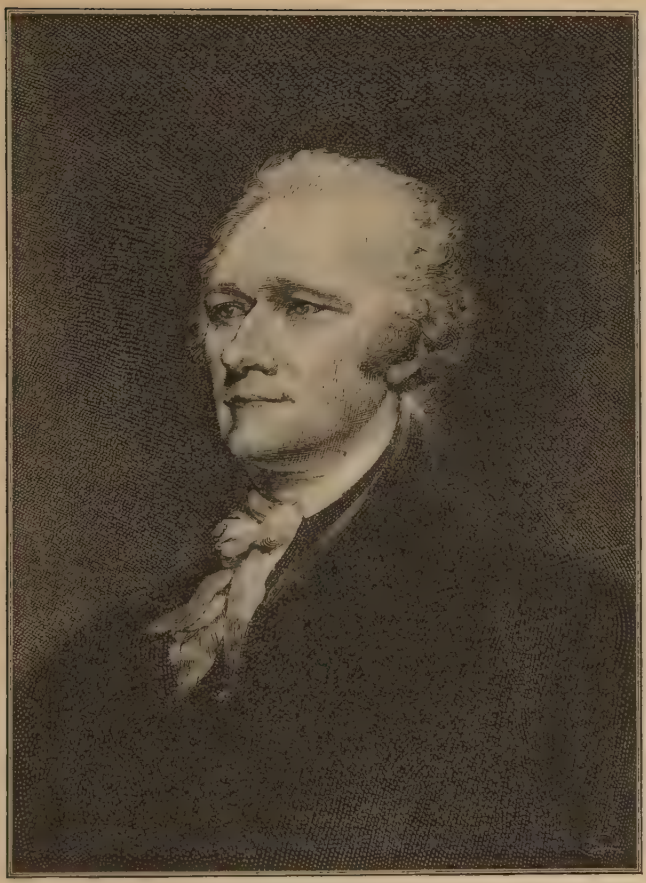
of the Church he won that of the dissenter, which was considerable.

His own classification of the race. On the other hand, he asserted that "Men are divided into two parties by their constitutions, those who fear and distrust the people and wish to draw all power from them into the hands of a higher class, and second those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest and safe although not the most wise depository of the public interest." It was to the latter class that he desired to belong, and his career shows that his desires were satisfied. His life was spent on behalf of the people in whom he had implicit faith. He believed he had rendered his best service to them when he had secured to them the fullest enjoyment of the blessings of liberty. If Jefferson was one of the greatest party leaders, and many think him the greatest in our history, that leadership was due to the value he placed upon liberty, and to his efforts expended to secure its blessings to the people, without regard to rank or distinction.

CHAPTER IV

ALEXANDER HAMILTON, THE REPRESENTATIVE OF POWER IN GOVERNMENT

The leadership of Hamilton. In a Republic, leadership of the masses is not synonymous with statesmanship. Political following is not essentially a result of superior talents. Not infrequently the reverse is true; however, in the latter case the leadership is spasmodic. Popularity partakes of the qualities of the heart, rather than of the head. It is stimulated by the unselfish service for man. Herein lies the ground where partizan leadership may dangerously approach demagogy. Alexander Hamilton was by nature disqualified for that sort of leadership common in republics which arouses the enthusiasm of the masses. His were the arts of argumentation rather than of emotion. His persuasiveness was that of the logician, not of the rhetorician. His statement was as colorless as the conclusions of the syllogism. His language was as free of ambiguity as his mind was of sophistry. There was no circumlocution in his methods. He went straight to the heart of the issue with the rapidity of the lightning's flash, and the cleavage was not less decisive. His logic neither consulted the interest of colleague, nor spared the feeling of opponent. Such talents are occasion for the keenest attachments on the one hand, and the intensest hatreds on the other. His intimate friends were not satisfied with the utmost praise, as his enemies were not with the fullest censure. His attributes were such as appealed to the aristocratic, rather than to the democratic,



ALEXANDER HAMILTON

elements, in his circle of influence. This won for him the odium of a respecter of persons; one who aspired to win the favor of the wealthy and well-born and cared little for the good opinion of the masses of mankind. On the other hand, this conviction won for him the opposition of the advocates of extreme democracy, chief of whom was Thomas Jefferson.

In contrast with Jefferson. As *liberty* was the key to Jefferson's political philosophy, so *power* or *authority* was the key to Hamilton's. His was the instinct of order, and his brief life is the best commentary upon its importance to man. He did not depreciate the value of liberty, in fact, he regarded it as the end of government; but he felt it was enjoyed only when regulated in government. Liberty without government was to him unthinkable. Liberty unregulated by authority was anarchy, the greatest enemy to mankind. His remedy for this nightmare was government. The greater the dangers from the former, the stronger the needs of the latter.

Source of Hamilton's philosophy. This conviction was due partly to his mental organization, and partly to the times in which he lived and the manner of his life. Born in the Island of Nevis, one of the West Indies, in 1757, he grew to manhood in the most stirring times ending in one of the great revolutions of the world. His poverty of birth left him to meet and conquer the world as he found it. After a short apprenticeship as a clerk he landed on the continent at Boston, then wended his way to New York, the place of his future activities. His ambition to achieve was early revealed in a note to his boyhood friend, in which he said: "I contemn the groveling condition of a clerk to which my fortune condemns me, and would willingly risk my life, but not my character, to exalt my station. . . . I shall conclude by saying I wish there was a war." One of the earliest as well as latest objects of his ambition was the career of a successful soldier.

His introduction to the public. His precocity had attracted the attention of men of influence and he was induced to enter

college. He first applied to Princeton. His originality is reflected by his insistence upon the privilege to enter for the purpose of pursuing only the studies which he named. Unable to secure this concession, he entered Columbia, then King's College. Here, as ever after, he busied himself with issues of public concern, rather than lessons in a text-book. His combative turn took him where controversy was heard. He was continually turning over in his mind the questions of the hour and was ready to express an opinion when opportunity offered. At the time of the enactment of the Boston Port Bill he was a student. This stripling, a college boy of seventeen, displayed such talent as gave promise of the most gifted and versatile political genius that had yet appeared in the colonies.

Early recognition. As this was the age of pamphleteers, it gave him free rein in a field to which his talents were peculiarly adapted. The cause of the Tories was argued in this manner. In reply to their arguments, Hamilton reviewed and vindicated the doings of the colonies. The sagacity with which this was done, the force of reasoning, the grasp of the situation, the familiarity with the principles of government and especially with the English constitution, were such as would do honor to any man of any country. The replies were attributed to John Jay, and when it was learned that they came from the pen of the youthful college boy of seventeen, it was thought incredible.

His remarkable career assured. Thus at the early age of seventeen he was versed in constitutional history. At nineteen he signalized himself as captain of artillery. At twenty he was made chief aid to Washington, when was begun that singular attachment which induced the great Father of his Country to lean more heavily upon Hamilton for counsel than upon any other American. At twenty-five he entered Congress; at twenty-nine he became a member of the New York legislature; at thirty he was a member of the Federal

Convention. At thirty-one he wrote his part of the Federalist, the strongest presentation of the principles of constructive government extant, and performed the feat of breaking down a great majority against the Constitution in the New York convention which did not adjourn until it had ratified the instrument against which the majority was at first committed. At thirty-two he was called to the head of the Treasury Department where his crowning work was accomplished. At the age of forty-one on the demand of Washington he re-organized the armies of the government and the next year, upon the death of Washington, he was made first in command. At the age of forty-seven he fell at the hand of the duelist.

The master-builder. While the fulness of manhood was reached before the age of his majority, the brilliancy of his career was eclipsed by a premature death. The span of his public career would measure thirty years — from 1774 to 1804. Twenty-one of these years were spent in the actual service of the government at the time when the work of both destroying the old and building the new was done. Hamilton was stronger in building than in destroying. To him more than to any other American is due the title of master-builder. From the ruins of war and the enfeebled attempts at confederation, he gathered the materials out of which he directed the rearing of our present system of government. The one dominant note in his philosophy was power. In his vocabulary are constantly occurring the words, power, authority, influence, energy, strength, vigor, administration, etc. If we seek the explanation outside of his mental organization it will be found in his public experience. Of the numerous evils entailed upon the colonies by the unfortunate quarrel with the parent country, war itself was scarcely more detrimental than the lack of government to assist in the ends for which the war was begun. The army in the field suffered most because of the government's utter want of authority to secure supplies from the States. It was the case of depending upon the voluntary

contributions of separate colonies, with no power to enforce requisitions.

Deplorable condition of the army. Under these conditions, let Washington depict the situation at a time when Hamilton was sharing the suffering: "Without arrogance or the smallest deviation from truth, it may be said that no history now extant can furnish an instance of an army's suffering such uncommon hardships as ours has done and bearing them with the same patience and fortitude." To see men without clothes to cover their nakedness, without blankets to lie upon, without shoes (for the want of which their marches might be traced by the blood from their feet), and almost as often without provisions as with them, marching through the frost and snow, and at Christmas taking up their quarters within a day's march of the enemy, without a house or a hut to cover them, — is to witness the suffering at Valley Forge. It was due to the lack of central authority and the excess of power in the individual States. Near a decade of war was a rare schooling on this specific point. Hamilton was instant in urging a stronger government.

His part in relieving the situation. When in 1782 he entered Congress he urged measures which should give to that body necessary power. As early as 1780 he wrote Duane a letter in which he analyzed the defects of the system, outlined a Federal constitution and urged a convention for that purpose. To him, perhaps, more than to any one else was due the calling of the Annapolis convention, of which he was a member. It was Hamilton in this convention that reported in favor of calling a convention for the purpose of revising the Articles of Confederation. For at least six years he had upon every occasion kept before the people the weaknesses of the confederation. This he had done in legislative halls, in public assemblies, in private letters and in conversations, until the defects, as he viewed them, were common knowledge. The popular party in his own State was against him. However, he

succeeded in inducing his State to send delegates to the Federal convention, of which he was one; Lansing and Yates being the other two. In this convention Hamilton was unfortunate; he was compelled to see his State go against him upon almost every question, as his two recalcitrant colleagues outvoted him. For this unfortunate situation his influence was not great. On June 18th he occupied the day in the presentation of his views, and soon after temporarily left the convention.

His plan of government. At the close of his exhaustive speech he submitted his plan of government. It provided for the three departments of government; executive, legislative and judicial. The legislative was to consist of two houses. The people were to elect the members of the House and they were to select a body of electors who were to choose the members of the Senate. The Executive was to be chosen in a manner similar to the election of members of the Senate. Both the Executive and the senators were to hold office during good behavior. His plan provided for the appointment of the executives of the various States by the general government. His theory of government rested upon specific principles:

(1) A healthful support of the government.
(2) The recognition of the need of the government.
(3) The ever-present sense of obligation to the government.
(4) Reliance upon force to compel obedience.
(5) The influence which goes with position.

He had argued in his exhaustive speech that in our dual sovereignties all these principles were with the State governments but generally absent from the national government. This was proof of the weakness and distraction of the confederation. To strengthen it, he desired to curtail the powers of the States and at the same time to augment the power of the confederation.

Hamilton in the Federal convention during the closing days. After an absence from the convention for a time, he returned

and labored assiduously for the consummation of its work. His two colleagues had withdrawn in ill humor and refused further to participate. Hamilton gave the vote of the Empire State for the Constitution. The opponents to the Constitution, headed by Governor Clinton, were making ready at home to prevent a ratification of the work of the convention. They promised well of success. It was well known that a majority of the people of New York was opposed to the Constitution. It was somewhat feared that this State was a sort of barometer; as it went, so likely would go the majority.

His part in creating a favorable public sentiment in U. S. At this juncture the rare sagacity of Hamilton conceived the idea of the publication in the press of the articles which are now known as the Federalist. There are eighty-five of them, fifty-one of which were written by Hamilton. The publication commenced soon after the convention had completed its work and continued until late in the following spring. In these essays the entire range of government is swept. He ransacked the authorities, and displayed the most remarkable familiarity with the governmental systems of both ancient and modern times. No man could better apply his information to the issue at hand. His first argument was in proof of the value of the proposed Union. In this he held up in merciless logic the pitiable weakness of the old system, to prove its ineffectiveness to effect or preserve the Union. In the examination he urged the necessity of an energetic government.

Hamiltonian maxims. He announced what he denominated maxims of government. Throughout his writings are found such expressions as the following:

Every power ought to be in proportion to its object.

There is no effect without a corresponding cause.

The means must be in proportion to the end proposed.

There should be no limitation of a power destined to effect a purpose in itself without limitation.

The greater the power is, the shorter should be its duration.

The peace of the whole should not be left to a part.

If the end is clearly defined the means must be employed to reach it.

This last maxim is the key to his interpretation of power, and stands as the foundation for the employment of *implied* powers in the Constitution, in the business of making and interpreting laws. The same principle was elaborated by Chief Justice Marshall in his various decisions involving that principle.

His dissatisfaction with the work of the Federal Convention. It is well understood that Hamilton was dissatisfied with the Constitution as it came from the convention. It gave too little power to the national government and too much to the States. It was declared by him to have sacrificed energy for the sake of liberty. He feared that confusion would displace order. It throws light upon that prodigy from another source. He was thoroughly convinced that a crisis had been reached in the life of the people. He declared that State jealousy had become so strong that there was little hope of the permanency of the republic if the work of the Federal Convention was rejected.

Source of this dissatisfaction. Far from being satisfied with it, he asserted it to be only the best the conditions would permit. His ambition as well as his determination was to see the loose confederation of States under the Articles of Confederation, superseded by a Union. His fears for the weakness of the former led him to advocate with vigor the latter. While the Constitution was not centralizing as he would have it, he declared it an improvement over the old plan; hence his herculean efforts to secure favorable action on the part of his own State. He demonstrated that the sovereignty of the State made nugatory the power of the nation. He also showed that government, to be effective, must operate upon the individual, not upon the State as under the old régime. In other words, the sanction must come from "We, the

People," not, " We, the States." He demonstrated the cause of the national humiliation, in the inability to maintain the national credit, to be the lack of power of the general government over questions of taxation, commerce, etc. In almost every line of his various arguments appear the demand for a transfer of power from the States to the general government. And in consequence he was charged with desiring to eliminate the States wholly.

Indictment of the old régime. The cardinal principle with him was effective administration of an energetic government. He declared it impossible under the confederation.

> We may indeed with propriety, he wrote, be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation, which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners, and to our own citizens, contracted in a time of immediate peril, for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power, which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudices of our interests not less than of our rights. Are we in a position to resent or repel the aggression? We have neither troops, nor treasury, nor government. Are we even in a condition to remonstrate with dignity? The just imputations on our own faith in respect to our own treaty ought to first be removed. Are we entitled by nature and compact to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seemed to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us. Our ambassadors abroad are the mere pageants of mimic sovereignty. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending is reduced within the narrowest limits, and still more from an opinion of an insecurity than from the scarcity of money.

He summed up this terrific indictment of the imbecility of the government as follows:

> To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded what indication is there of national disorder, poverty, and insignificance, that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes.

He broke forth:

> Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquillity, our dignity, our reputation. Let us break the fatal charm which has too long seduced us from the paths of felicity and prosperity.

He showed impatience with the friends of the old system, since they admitted the national government was without energy but refused to confer necessary power to supply that energy. He declared that they aimed at irreconcilables; an augmentation of Federal authority without diminution of State authority, sovereignty in the Union, and complete independence in the members; in a word, they cherished "with blind devotion the political monster of an *imperium in imperio*."

How regarded by his opponents. His unceasing efforts to strengthen the national authority had made him the chief target for the shafts of the advocates of liberty. He was held up as a monarchist, an enemy to republican government. He keenly resented the imputations. He remarked, "The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton, and too malignant, not to excite the indignation of every man who feels in his own bosom a refutation of the calumny. The perpetual changes which have been rung upon the wealthy, the well-born, and the great, have been such as to inspire the disgust of all sensible men." He ended the Federalist papers in significant language:

These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps a military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from time and experience. . . . A nation without a national government is, in my view, an awful spectacle. The establishment of a Constitution in a time of profound peace, by the voluntary consent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety. I dread the more the consequences of new attempts because I know that powerful individuals, in this and in other States, are enemies to a general national government in every possible shape.

In the New York convention. In the New York convention, called to act upon the report of the Federal Convention, Hamilton by all odds was the most interesting figure. He found himself in a body of men, sixty-five in number, with forty-six inclined to oppose ratification. The interest he had created by the publication of his arguments prior to the meeting of the convention, amounted to a sensation. It was centered upon what he would do as leader of a hopeless minority. His usual sagacity was displayed by no sign of perturbation. His efforts were constant, but respectful to the opposition. He declared that all sought the same end, a republican government upon a solid basis; that the history of governments revealed a struggle between the adherents of liberty and authority; in our Revolution, which gave to us the confederation, the zeal for liberty became predominant and excessive; the fathers had acted alone from this passion, with no other view than to escape from a despotism; while this object was valuable, another was equally valuable, but one which their enthusiasm incapacitated them to properly estimate: namely, strength and stability in the organization of the government, and vigor in its operations. He then declared that while the body of the people in any country sincerely desires the welfare of the people, they are not possessed of the discernment and stability necessary for systematic government; they are too

often led into excesses by misinformation and passion; the necessary sacrifices of local advantages to general interest are rarely observed in practise. While the State governments are essential to the form and spirit of the general system, national supervision is a prerequisite. The danger even from the new system is not too much dependence of the States upon the nation, but rather the reverse. The States can never lose their powers till the whole people of America are robbed of their liberties. He here for the first time elucidated the principle of double sovereignty of the system. He said:

> That two supreme powers cannot act together, is false. They are inconsistent only when they are aimed at each other, or at one indivisible object. The laws of the United States are supreme as to all their proper, constitutional objects; the laws of the States are supreme in the same way. These supreme laws may act on different objects without clashing; or they may operate on different parts of the same common object with perfect harmony.

He again disclaimed any intention to repudiate the State governments, but reminded the convention, that

> The Constitution under examination is framed upon truly Republican principles; and that it is expressly designed to provide for the common protection and the general welfare of the United States and therefore it must be utterly repugnant to this Constitution to subvert the State governments or oppress the people.

In this manner he proceeded. His calm yet intense interest in the support of the new system, which kept him upon his feet much of the time, won for his cause the respect of all, but not their active support. There were many episodes in the convention which were dramatic. It ended at last with Hamilton in the majority. It is doubtful whether another instance of the signal effect of cold logic can be found in the history of conventions.

Washington's foresight. As Secretary of the Treasury, it fell to the hands of the master-builder Hamilton to organize the machinery of the government. The need of the hour was

not a *destructive*, but a *constructive* type of statesmanship. It was a builder, not a wrecker, that was now demanded. Washington's keen insight sought out the New Yorker. Here was Hamilton's opportunity. He had frankly declared his suspicions of the inadequacy of the new plan to meet the ends for which it was intended. But here was the chance to fill in by *construction* what he had failed in *stipulation*. He at once took the *liberal*, as against the *strict* construction theory. He employed both the *expressed* and *implied* powers in the interpreting of his constitutional limits.

Hamilton's purposes announced. That he might realize the energy and stability for which he had been so long laboring, his first effort was to strengthen the public credit. In his first report he set out the objects to be secured, as follows:

> To justify and preserve the confidence of the most enlightened friends of good government; to promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new sources both to agriculture and commerce; to cement more closely the union of the States; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy.

There is no hint of liberty in this, except as it may be inferred from vigor and energy in administration.

First steps. His assumption of State debts was his farthest reach. At first it might be thought his policy would be detrimental to the nation. But soon it was noted that in this manner he was seeking national influence over certain State matters, and at once was winning favor from them by the lightening of their burdens of debt. The States with much debt were pleased with this policy. Others with little debt were displeased. Virginia remonstrated. It was upon this occasion that Hamilton's imperious nature broke out. He declared to John Jay, "This is the first symptom of a spirit which must either be killed or will kill the Constitution of the United States."

Second important step. His next great scheme for nationalizing the government was the Bank. He made an exhaustive report upon the public credit, also upon manufactures. He recommended the establishment of a Bank to satisfy the needs of the people. He submitted his plan to the President, who, for information and advice, requested a written opinion upon the constitutionality of the measure, from both Jefferson and Hamilton.

Jefferson on the Bank question. As should have been expected, Jefferson, "the watch-dog" of the rights of the States, reported adversely. He declared that the measure was not sanctioned by the Constitution. He based his opinion upon the clause in the Constitution, "that all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people;" the power in question was not included in this sanction, nor in the list of enumerated powers of the government. He asserted that it was not included in the general provision, "that Congress can make all laws which are necessary and proper for carrying into execution the enumerated powers," since they can be carried into execution without the Bank, and therefore it was not necessary. He also declared that although the Bank might be convenient, it was not necessary; and any law made for convenience, which was not necessary, would be without force.

Hamilton's opinion. To this line of argument Hamilton replied. He laid down the proposition, "that every power vested in a government is in its nature sovereign, and includes by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power; and which are not precluded by restrictions and exceptions specified in the Constitution, are not immoral, are not contrary to the essential ends of political society." He then cited the clause which defines the supreme law of the land to be "the Constitution, the laws made in pursuance thereof,

and the treaties" in vindication of his position on the Bank proposition. He admitted that the government can exercise only such powers as are delegated to it, but denied that delegation must be necessarily expressed, and affirmed that it might be implied. He declared implication was as much delegated as expression. If the Constitution specifies an end, and is silent about the means to reach it, the latter is delegated by implication as certainly as the former is by expression. Here we have drawn for us the lines which are to distinguish the Jeffersonian from the Hamiltonian theory of government. The Bank measure became a law by the signature of Washington.

Practical necessity of his theory. The inauguration of national spirit and administration was the occasion for numerous quarrels between the two sovereignties, national and State. The application of national authority in many States was disputed by the State. For example, the supervision of the public lands, and their occupancy by the Indians when in the territorial limits of a State, were the source of much galling to the State. And in specific cases like that of Georgia, only the strong arm of the national government, which was promised by the vigorous Secretary of the Treasury, induced the State to desist from further interference. Another famous case was the State opposition to the national enforcement of the hated excise law, one of Hamilton's favorite measures, to extend the national authority.

Effect upon the advocates of liberty. Such events tended to confirm his fears for Republican governments, and his treatment of them was designed to increase the fears of the ultra-democratic element. That element became convinced that their suspicion of the monarchical trend of affairs was no chimera, but a reality. Hamilton was now openly charged with heaping up a vast debt, and providing for its continuance, rather than for its liquidation; that he maintained a corrupt squadron to influence the legislative department of the govern-

ment, and was employing the same to extend the principles of aristocracy and monarchy. These fears were grounded upon his well-known opposition to the doctrine of State Sovereignty, his yearning for national supremacy, his energy in securing by construction what had been lost in stipulation, and his profuse employment of the doctrine of implied powers. His attitude upon assumption, the Bank, and commerce, was clearly discerned by friend and foe. His insistence upon complete control of taxation and revenues, and the strong hand with which that control was to be effected, had the same meaning. His success in reorganizing the army and his plea for a strong navy for defense as well as for commerce, taught the same lessons. His advice upon a neutral position toward France and England, his leaning in his sympathies to the English, rather than to the French system of government, convinced his opponents that he was monarchical in his nature and aspirations. His policy of territorial expansion, and his conception of American ascendancy in the western world, the former of which was executed by Jefferson, and the latter by Monroe, demonstrated his imperial ambitions. His conception of an energetic government did not cease with his term of office. In 1799 he outlined his views to the Speaker of the House of Representatives. He desired to strengthen centralization in the interest of power in the government, by an enlargement of the national Judiciary. He recommended a policy of internal improvement, a revenue system which would supply abundant funds, a stronger and more efficient army and navy, an enlargement of national authority, a lessening of State rights and an enactment and enforcement of effective Alien and Sedition Laws.

Mark of great weakness. In the revolution of 1800, which witnessed the Hamiltonian administration under Adams superseded by the Jeffersonian, Hamilton saw, as he thought, an end to good government. His petulance broke out in a letter to Morris as follows:

Mine is an odd destiny. Perhaps no man in the United States has sacrificed or done more for the present Constitution than myself; and contrary to all my anticipations of its fate, as you know from the beginning, I am still laboring to prop the frail and worthless fabric. Yet I have the murmurs of its friends no less than the curses of its foes, for my reward. What can I do better than to withdraw from the scene? Every day proves to me more and more that this American world was not made for me.

What was he, politically? We may now raise the question, Was Hamilton a *monarchist?* The testimony of his political enemies answers in the affirmative. What will be the verdict of history? He had a great admiration for the English government. He pronounced it the best in existence. He shuddered at the excess of French republicanism which sent the King to the block. He fondly cherished strength in the nation and deplored too much of it in the State. He worshiped at the shrine of authority and order, rather than at that of liberty and freedom. He declared the establishment of justice and the security of freedom to be the ends of government. These ends can be sought successfully only in the government which has authority. He frequently referred to the value of liberty, but never confused it with license. His insistence was ever for the establishment of a republic, and he bitterly resented the charge of desiring to create a monarchy. He proposed to be guided by the British constitution in seeking the elements of stability and permanency which a Republican form demands, and in nothing more. So much from his own testimony. His plan submitted to the convention has been taken as monarchical in spirit. This does not necessarily follow. He persistently asserted that the government must rest on the consent of the people; that with the loss of that principle, liberty would be lost. It must appear to all that his ambition to establish a government, sovereign in its nature and application, energetic in its administration, potent in its influence, stable in its character at home and abroad, whose decrees were to be supreme throughout the land, and re-

spected by every State and every citizen, — led him to utter doctrines of centralization which were inclined toward monarchy, as viewed by his opponents. It must also appear that it is unfair to judge a political philosophy by fugitive statements made in the heat of controversy. If upon such testimony Hamilton is proved a monarchist, upon the same grounds Jefferson is proved an anarchist. While Jefferson's love of liberty led him to utter extravagances, so Hamilton's regard for order induced him to commit a like blunder in the opposite direction.

Jefferson and Hamilton. All parties must concede to Jefferson invaluable service in emphasizing the value of local self-government and the liberty of the individual, and they must concede to Hamilton no less valuable service in the inauguration of the prerogatives of central authority and order in the nation. To Jefferson was allotted a ripe old age, during which he saw the Hamiltonian theory put into practise by his own adherents, as well as by himself, in numerous cases. Had Hamilton been given the years allotted to the average man, he would have observed the government, which his genius had done most to call into existence, administered by his opponents for forty years, and under that administration developed to such effectiveness as he could scarcely have hoped for even under his own personal direction.

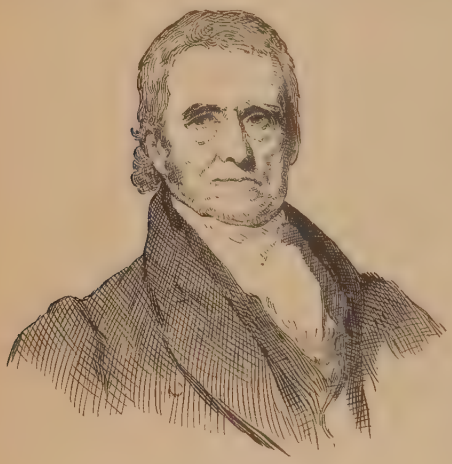
CHAPTER V

JOHN MARSHALL, THE RIGHT ARM OF NATIONALITY

John Marshall with Washington. Among the suffering soldiers in that terrible winter at Valley Forge might have been seen a slight and slender figure, with fair countenance and a stooped posture, frequenting the headquarters of his chief and shivering with cold against which his scanty clothing was little protection. Here, as in the case of another, yet more brilliant, if less judicial, he received the object lessons on the imbecility of a government without coercive powers. The years of war and loose confederation were as significant to him as to Washington and when the Federal Convention had completed its work, in which John Marshall had no part, and had sent it to the people of the several States to ratify or reject, no man in the nation except Washington and his brilliant secretary so clearly recognized the necessity of the adoption of the Constitution as this tall Virginian who was destined to become America's greatest chief justice. Both by nature and training, his was a judicial mind; a man of few words but incisive expression. As was said of him by a contemporary, "He possesses one original and almost supernatural faculty; the faculty of developing a subject by a single glance of the mind and detecting at once the very point on which every controversy depends. No matter what the question; though ten times more knotty than the gnarled oak, the lightning of heaven is not more rapid or more resistless than his astonishing penetration." He was one of the trio who received his legal

training from George Wythe, and it is no disparagement to either Jefferson or Madison to assert that Marshall was the greatest law student ever trained by the great chancellor.

Early public service. After a brief career as a soldier at the head of the Virginia "Minute Men," a promising career at the Bar just opening, which in a decade had placed him at the top, he entered the legislature of his State in 1782 where he labored for six years. This period, which is significantly denominated the "critical period" in American history, prepared him to render his country his really first great service in the State convention which was called to act upon the Federal Constitution.



JOHN MARSHALL

His service in the ratifying convention. There were at least six men who in history stand out pre-eminently as leaders of two schools of political theory at this time. At the head of the one stood Jefferson. With him stood Patrick Henry and Samuel Adams. Two were from the "Old Dominion," and one from Massachusetts. At the head of the other school stood Hamilton. With him stood James Madison and John Marshall. Two were from the "Old Dominion," and one from New York. While Madison was better known and was depended upon most for the outcome of the Virginia conduct toward the new Constitution, and while it is conceded on all hands that his influence was superior to that of any other man in the convention, it must also be conceded that Patrick

Henry's powerful eloquence was overmatched by the incisive logic of Marshall, whose speeches wrung from Henry himself the tribute conceding to him "an eloquence, splendid, magnificent, and sufficient to shake the human mind," and a "character which deserves the highest veneration for his candor on all occasions." Marshall well knew the infatuation of Henry's natural eloquence. His mighty prestige gained by his unequaled oratory, and this was felt by Marshall as the invulnerable bulwark of the friends of the State Sovereignty scheme of the old Confederation. With a determination born of despair, under the imbecile government described by Washington as "one to-day, and thirteen tomorrow," he directed his assaults upon this stronghold. He made three elaborate arguments. His first was in reply to Henry, who inveighed against giving to the government the power of taxation, and argued for its retention to the States. His second was in reply to the argument that the State should retain control at all times over the militia. His last was a lucid exposition upon the provision in the Constitution for the Judiciary.

His position on political theory. The trend of his mind is clearly revealed here at the age of thirty-three. He was in unison with the Fathers in his desire to secure the blessings of good government and of liberty. He differed from Jefferson in his methods of securing that liberty, and agreed with Hamilton that the end must be sought in a vigorous administration of an energetic government. He saw with clear vision the line of dispute, and with the precision of the marksman sent his arrow to the pivotal point. "I conceive," he said, "that the object of this discussion now before us is whether democracy or despotism be most eligible. . . . The supporters of the Constitution claim the title of being firm friends of the liberty and the rights of mankind. They say they consider it the best means of protecting liberty. We, sir, idolize democracy." He then argued that the Constitution offers a

well-regulated democracy which is to be preferred to any monarchy. He declared that "strict observance of justice and public faith, and a steady adherence to virtue," were not only maxims of democracy, but principles of good government. He declared the object of the national government was to protect the United States, and promote the general welfare of the people. Men and money are necessary, and experience proves that neither can be obtained under a system of State requisition such as then existed. The remedy was to place the taxing power in the nation instead of in the States. His argument upon the national control of the militia was of the same tenor.

Upon the necessity of a sound Judiciary. But his dissertation upon the Judiciary is the best example of his lucid and forcible power of statement. His language is as chaste as it is simple. His thought is as clear as the technicality of the subject will permit. His reasoning is as cogent as his logic is sound. "Here are tribunals," he said, "appointed for the decision of controversies which were before, either not at all, or improperly, provided for. That many benefits will result from this to the members of the collective society every one confesses. Unless its organization be defective, and so constructed as to injure instead of accommodate the convenience of the people, it merits our approbation." After calling attention to the sources of objection in the manner of selecting the judges, and their tenure of office, he proceeds, "What is it that makes us trust our judges? Their independence in office and manner of appointment. Are not the judges of the Federal court chosen with as much wisdom as the judges of the State courts? Are they not equally if not more independent? If so shall we not decide that they will decide with equal impartiality and candor? If there be as much wisdom and knowledge in the United States as in a particular State, shall we conclude that that wisdom and knowledge will not be equally exercised in the selection of judges?" He most ably

defended the provisions defining the jurisdiction of the Federal court. In a single paragraph he foreshadowed his service in behalf of nationality or constitutional supremacy, which was rendered during thirty-four years of performance of duty as the head of the greatest tribunal known to man. In speaking of the jurisdiction of the Federal courts he said, "Can they (Congress) go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction."

His conception of the extent of authority. Here we have anticipated the dignity and power to be lodged in the Federal Judiciary. It will not only receive cases upon an appeal from the decision of the highest court in the State, and pronounce it void if in the judgment of the judges it is contrary to the Constitution of the United States, but it will go further. It will sit in judgment upon the constitutionality of a law enacted by the legislature of the nation and signed by the Executive of the nation, and if, in the judgment of the court, it is not warranted by the Constitution, it will declare it void and of no effect. Within thirteen years the man who uttered this remarkable principle of judicial prerogative, then unknown in the annals of history, sat as the chief justice, where he was destined to remain for thirty-four years, during which time in that position he did more to augment constitutional supremacy and thereby increase the national authority and create *de facto* a national system which soon commanded respect at home and abroad, than any other man save Washington and Hamilton.

The Supreme Court under Marshall. During his thirty-four years of service as chief justice (1801–1835), Marshall delivered the opinion of the Court in five hundred and nineteen cases. Of this number at least sixty-two cases involved

the principles of constitutional law, thirty-six of which Marshall wrote himself. Very rarely was there given a dissenting opinion, and only once was the chief justice compelled to give a dissenting opinion from that of the majority of the court. It is nearer correct to say that in all except one case the majority of the court joined the great chief justice in his opinion. This item is of great interest to show, not only the strength of the jurist but the regard in which the tribunal over which he presided was held, and the respect for their opinions shown by the people at large. It gave to the decisions of this court the force of written law. The vast importance of this fact cannot be overstated when it is remembered that the whole country was divided upon the question of power in the nation on the one hand, and privilege in the States on the other. Marshall said the whole country "was divided between two great political parties; the one of which contemplated America as a nation and labored incessantly to invest the Federal head with powers competent to the preservation of the Union, and the other, attached to the State governments, viewed all the powers of Congress with jealousy and assented reluctantly to measures which would enable the head to act in any respect independently of the members." This is a fair statement of the line of difference between the two schools of political theory. From the nature of law-making, a legal enactment is law until it is either repealed or is pronounced void upon constitutional grounds. The first method is the one employed in European governments; but both are employed in this country. Herein is the unique character of the Federal Judiciary. From the very beginning, both by design and practise, the Judiciary is the tribunal to determine the force of law. But the court will never act until the case, in regular process, comes before it. It has nothing to do with what the law ought to be; it judges what it is only. If, in its judgment, the law transcends the authority of the makers, it so declares, and from the nature of legal enactment, it is void.

Marbury against Madison. The first decision by Marshall to develop this principle was Marbury against Madison, in which it was sought to compel the Secretary of State to deliver a commission of appointment, made out by order of President Adams but not delivered before the expiration of his term of office. Marshall in delivering the decision went into the nature of the government. He said:

The question whether an act repugnant to the Constitution can become the law of the land, is a question deeply interesting to the United States. . . . That the people have an original right to establish, for their future government, such principles as in their judgment shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. . . . The powers of the legislature are defined and limited, and that those limits might not be mistaken, or forgotten, the Constitution is written. . . . The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like any other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts, on the part of the people, to limit a power in its nature illimitable. . . . It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide upon the operation of each. . . . If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply. Those then who controvert the principle that the Constitution is to be considered in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet in practise completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. . . . It thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written Constitution.

There was no escape from this sort of reasoning. While it was hailed by the zealots of State Sovereignty as the sure indication of the loss of priceless liberties, by the adherents of a strong government it was a demonstration of the efficiency of the judicial power in the system.

Relation of State and Federal courts. The next decisive step was toward the prerogative of this court to review and set aside, if necessary, the decision reached in the highest court of a State. The Marbury case demonstrated to the friends of the looser style of government the unmistakable tendency of the Judiciary to assert the unheard of prerogative to nullify an act of the people as expressed by the law-making power. It promised, they alleged, the fulfilment of all their fears, so frequently expressed upon all sides. These devotees of liberty in government saw in the sovereign States the repository of their rights, and to these several governments they looked for defense. This theory had been promulgated in 1798–99 in the famous Virginia and Kentucky Resolutions. In the variety of interests of both the nation and the States, in the poorly defined relation between them, in the complications of co-ordinate sovereignties, inevitable disputes must arise, which must demand a tribunal for adjustment. What, under the Constitution, is the proper tribunal for the adjudication of such controversies? In a dispute between nation and State, who has final jurisdiction; the nation, the State, or both? The wording of the Constitution gives it to the nation in clearly expressed terms.

United States against Peters. To what extent does national authority go? To the complete nullification of the State enactment, if decided to be unwarranted by the Federal Constitution, and to the reversal of the judgment of the highest court in the State. The first case which established this supremacy of national authority over the State was that known as United States against Peters. The statement of facts is as follows: Gideon Olmstead and others, citizens of

Connecticut, were taken prisoners by the British and put to service on the sloop *Active*. The prisoners seized the vessel and sailed into Egg Harbor. A Pennsylvania armed vessel captured the *Active* and towed it into port. It was condemned as the prize of the Pennsylvania captors by the Admiralty court. Whereupon Olmstead, the original captor, appealed to the Court of Appeals under the confederation, which reversed the decree of the Admiralty court and ordered the marshal to dispose of the property and pay over the proceeds to Olmstead. Whereupon the marshal disposed of the vessel, but ignored the decree of the confederate authority and paid over the proceeds to the judge of the Admiralty court, instead of to Olmstead as ordered. The receiving judge paid it into the State treasury. Then Olmstead brought suit for the recovery of the money in the United States courts (the Federal Constitution having been ratified and having displaced the Articles of Confederation in the meantime). The legislature of Pennsylvania at once passed an act to protect the parties who had ignored the decree of the Federal district court, which decree had been made in favor of Olmstead. At this juncture the Federal district judge, Peters, refused to execute his own decree, whereupon an application was made to the Supreme Court of the United States to compel the execution of the decree.

What did it decide? The decision was rendered by Chief Justice Marshall in 1809, the case having been in litigation from 1777. His language was simple, but significant. "If," said he, "the legislatures of the several States may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals. So fatal a result must be deprecated by all, and the people of Pennsylvania as well as the citizens of every other State must feel a deep interest in resist-

ing principles so destructive of the Union, and in averting consequences so fatal to themselves." No language could be less ambiguous. The supremacy of the national authority was asserted. The conflict between the two authorities had become acute. The issue was stripped of all verbiage. The nation by the command of its highest tribunal had ordered the reversal of a State decree. It had ordered the State to perform a specific duty, the payment out of its treasury of a specific sum to a claimant who had been denied the said sum by the decree of the State backed by legislative sanction. Would the State obey? When the execution was attempted, a guard with bayonets under the governor's order was placed around the houses of the respondents by the order of General Bright, commanding a brigade of militia. The United States authority proceeded to summon a *posse* of two thousand men to assist him in the performance of his duties. The governor made an appeal to the President to interfere, that the rights of the State might be secure, but Madison made it clear that the supreme law of the land must be respected.

Federal relations — Fletcher against Peck. In the very next year Marshall reinforced the dignity and authority of the national government in the case of Fletcher against Peck, in which he said, "But Georgia cannot be viewed as a single, unconnected, sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution. She is a part of a large empire; she is a member of the American Union; and that Union has a Constitution the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several States, which none claim a right to pass. The Constitution of the United States declares that, "no State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." Here it was decided that the rights, acquired under a law enacted by the State of Georgia, could not be denied by a subsequent law which was found unconstitutional. In other words, whether

a law passed by a State legislature was constitutional or not is a question within the jurisdiction of the Federal court if it can be gotten into the court. The famous Dartmouth College case developed the same general principle.

Federal relations — McCulloch against Maryland. In 1819 one of the most far-reaching decisions ever handed down by the Supreme Court of the nation was delivered by Marshall in the Bank controversy, known in the Supreme Court Reports as "McCulloch against the State of Maryland." One of the branch Banks of the government was established at Baltimore. In 1818 the legislature of Maryland enacted a law taxing all Banks or branches of Banks. Upon the refusal of the Federal branch Bank to pay the tax, its cashier, McCulloch, was sued. The Maryland courts rendered judgment in favor of the State, whence the case was taken to the Supreme Court of the nation. The opinion of the Court was handed down by the chief justice, who said:

Although among the enumerated powers of the government we do not find the word bank or incorporation, we find the great powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct a war, and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are intrusted to its government. The power given, it is the interests of the nation to facilitate its execution. . . . The government which has the right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; . . . But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the government to general reasoning. To its enumeration of powers is added that of making all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States or any department thereof. . . . That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that

which exerts the control, are propositions not to be denied. He continued, If the States may tax one instrument employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent papers; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not desire to make their government depend upon the States.

Its significance. It pronounced the Maryland law unconstitutional, and therefore of no effect. It also decreed that Congress was vested with power broad enough, without fear of State obstructions, to give it ample authority to employ whatever means in its opinion were necessary for carrying into execution its own ends. No dictum of Hamilton ever went further in the right to employ *implied* powers under the Constitution. However, in 1824, he disclaimed either the *broad* or *strict* interpretation. He declared:

It has been said that these powers ought to be construed strictly; but why ought they to be so construed? Is there one sentence in the Constitution which gives countenance to this rule? . . . What do gentlemen mean by a strict construction? If they contend only against that enlarged construction which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. . . . If they should contend for that narrow construction which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot conceive the propriety of this strict construction, nor adopt it as a rule by which the Constitution is to be expounded. . . . Powerful and ingenious minds, taking as postulates that the powers expressly granted to the Union, are to be contracted by construction into the narrowest possible compass, and that the original powers of the States are retained, if any possible construction will retain them, may, by a course of well digested but refined and metaphysical reasoning founded on these premises, explain away the Constitution of our country and leave it a magnificent structure to look at, but totally unfit for use. . . . To say that the intention of the instrument must prevail, that this intention must be collected from its

words, that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended, that its provisions are neither to be restricted into insignificance, nor extended to objects not comprehended in them or contemplated by its framers, is to repeat what has been already said more at large, and is all that can be necessary.

Rules of Interpretation. The great chief justice regarded it his duty to respect the intention of the makers of the law in its interpretation. If there is a doubt in regard to its constitutionality, it was always given in favor of the law. He also desired a full majority of the court when such an important issue was before it. While he employed the doctrine of implied powers, as is seen, he was careful to remain within safe grounds, denying the imputation of the employment of powers not within the plain import of the law.

Cohens against Virginia. Two years after the famous Bank decision, one of the most important findings of the Supreme Court was made in the case of Cohens against Virginia. At least two questions were here decided: whether the Supreme Court had jurisdiction in a case where a State was a party, and whether it could revise the decision of the highest State court. He answered both these points in the affirmative, in a course of reasoning similar to that employed in preceding cases. He made it clear that the national government was supreme in all matters that pertained to the welfare of all the people, and the States were unmolested in the exercise of powers in matters of local interest, and pertaining to the State alone. He also made it clear that the national court must exercise an appellate power over the judgments of the State courts, "which may contravene the Constitution or laws of the United States."

Principles established. Thus during the incumbency of John Marshall at the head of the Supreme Court, certain specific questions were settled:

1. There are in our system two sovereignties, the nation and the State. Each is supreme in its respective domain.

2. In case of a dispute over the power of each, or in case of a conflict of sovereignties, the nation is supreme.

3. The nation, not the State, is judge of what is the law. Whether the law is contrary to the Constitution or not, is a question for the nation.

4. The nation may revise and reverse the decision of the highest court in the State.

5. The citizen's primary allegiance is to the nation, not to the State.

6. The Constitution, the supreme law of the land, should receive a liberal interpretation, which is neither too strict nor too loose to reach the plain intent of the law.

7. Implied powers are justified when the end to be reached is specified without defining the means.

Opinions of his contemporaries. By this body of decisions which are reported in thirty-two volumes, the national government, then only theory, became a fact. John Adams was justified in his opinion that his proudest service to the nation was in his gift to it of John Marshall. His marvelous acuteness led Webster to say, "When Judge Marshall says 'it is admitted,' I am preparing for a bomb to burst over my head and demolish all my points." His luminosity won for him the highest respect of the great legal talent who practised before the court. Story dedicated his "Commentaries on the Constitution" to him. William Pinkney, Maryland's most brilliant lawyer, declared that Marshall was born to be the chief justice of any country in which he lived. In 1884 Chief Justice Waite said, "Hardly a day now passes in the court he so dignified and adorned, without reference to some decision of his time, as establishing a principle which, from that day to this, has been accepted as undoubted law; and when at the end of his long and eminent career he laid down his life, he and those who so ably assisted him in his great work had the right to say that the judicial power of the United States had been carefully preserved, and wisely administered."

Marshall in the Burr case. During his long career his equable temper and judicial mind served him in winning a reputation for fairness and impartiality rarely met with in the work of jurisprudence. Perhaps one of the greatest strains he underwent was the case in which Burr was charged for treason. There was little doubt of the guilt of this man. But the indictment under which he was tried alleged the act of treason on the island of Blennerhassett, at a time when it was admitted that Burr was not present. In view of this the law of evidence would exclude all evidence of Burr's doings elsewhere than on the island, unless he was proved constructively present. This could not be done. Hence it was the duty of the presiding judge to exclude that part of the testimony which concerned Burr, leading up to the time and place alleged in the indictment. To rule this out meant virtually to find for the defendant. This was known to be in direct opposition to the wishes of President Jefferson, who was the real prosecutor in the suit, as it was also averse to the wishes of the court. But he chose to act in accordance with the law and take the consequences. He said, " That this court dares not usurp power is most true. That this court does not shrink from duty is not less true. No man is desirous of placing himself in a disagreeable situation. No man is desirous of becoming the subject of calumny. No man, might he let the bitter cup pass from him without reproach, would drain it to the bottom. But if he has no choice in the case, if there is no alternative presented to him but a dereliction of duty or the opprobrium of those who are denominated the world, he merits the contempt as well as the indignation of his country, who can hesitate which to embrace."

His place in history. This heroic character who could afford to invite the criticism of the world rather than transgress the laws of equity, was admirably fitted to cement the Union and thus to reinforce the Constitution as the instrument for the establishment of justice, common defense, domestic tran-

quillity, general welfare, and the security of the blessings of liberty among the people of his country. During the first forty years of constitutional existence, nationality owes more to John Marshall than the publicist is free to admit.

CHAPTER VI

A NEW ALIGNMENT OF PARTIES

Fatality of negation only. The ease with which Jefferson and Madison adopted the loose construction theory of constitutional interpretation and the success attending their administrations were complete answers to the charges of the Federalists of reckless radicalism and flagrant incompetency of the party in power. The fatal policy of negation which led the Federalists, the avowed exponents of loose construction, to adopt the theory of strict construction in order to make opposition to the party which had displaced them was a sure symptom of ultimate disruption. Any political party can better withstand a change of policy than a mere campaign of negation. To oppose what the responsible head proposes, never enlists the admiration of the conservative voter, who holds in his hands the issue in a campaign. However frank a leader may be in his change of face, the public must be convinced that the change is due to a change of conditions, and not suggested by a spirit of negation born of the desire to oppose simply for opposition's sake.

Progress of Federalist disintegration. This constant opposition of the Federalists to every measure proposed by the Administration, led them to commit blunders, until they drove from their ranks many of their stanchest supporters and left the party a hopeless minority. Feeble attempts were made to maintain an organization. The party which had controlled the government for the first twelve years of its exist-

ence, was defeated in 1800 by eight votes in the electoral college. It still controlled seven of the sixteen States, while the opposition controlled six; three States were divided between the two. By 1804, it controlled but two States: namely, Connecticut and Delaware, with only fourteen votes in the electoral college. Its opponents carried fifteen States, with 162 votes in the college. By 1808 the embargo policy of Jefferson had lost to him Massachusetts, Rhode Island and New Hampshire, which, with Connecticut and Delaware, gave Pinckney forty-seven votes to 122 for Madison and six for Clinton. By 1812 New York and New Jersey joined the Federalist group with Maryland divided, leaving Madison with 128, to eighty-nine for Clinton.

An interesting study. This increase of the Federalist vote admits of an interesting explanation. The hopeless defeats of 1804 and 1808 induced the leaders to catch at every seeming advantage. Much opposition to Madison had developed in his own party and in his own State, largely through the machinations of John Randolph, who had already begun his famous fight against "King Caucus." DeWitt Clinton of New York was becoming identified with this opposition, which represented the most powerful faction in his State. This faction of the Republicans in New York favored Clinton for President as against Madison. The question now for the hopeless minority party in the nation to answer was, "Shall we put up a candidate of our own, or shall we join the disaffected element in the Republican party?" To decide upon the matter a convention of Federalists to be held in New York was planned. In this convention, the first of its kind in our political history, eleven States were represented by seventy members. Griswold, Sedgwick, Otis, King and Gouverneur Morris were active members. The convention decided to support Clinton, and they put him forth as the Federalist candidate. The adoption of a minority candidate is invariably a sure sign of weakness and invites defeat. It is a tem-

porary expedient to forestall immediate disruption, but is surely followed by ultimate dissolution unless corrected at once.

Complete disruption. In 1816 the Federalists carried but three States: Massachusetts, Connecticut and Delaware, with thirty-four votes. Monroe carried sixteen States, with 183 votes. By 1820 the Federalist party was demolished, the Democratic candidate having carried every State in the Union, and 231 votes out of 232 in the college. This period of "good feeling" is taken as evidence of the absence of party spirit. Such conclusion is unwarranted. On the contrary, party feeling ran high. It only wanted leadership around which to crystallize. All the old leaders were discredited. Even the party name of the feeble opposition became offensive. Yet the contention between political theories was ever present, ready to assert itself at the earliest opportunity. The successful close of the war and the complete demolition of the party in opposition afforded the people time to develop a domestic policy. At least three questions of interest claimed the scrutiny of the statesman: namely, (1) A fiscal agency — a Bank for the purposes of circulation; (2) The taxation question for purposes of raising revenue, or the tariff; and (3) The question of internal improvements.

Symptoms of a new alignment. In the consideration of these questions a variety of opinion was expressed. There were those who favored a Bank with certain limitations; others who opposed any further governmental participation in such an institution; while there were still others who saw in the establishment of such an agency the much needed relief from conditions always present at the close of a war. There were those who argued the necessity of the inauguration of the policy of protection of industries. They insisted the war had not only demanded a greater revenue, but it had taught us the value of home industries and had revealed our capacity to establish such industries with the necessary pro-

tection. Others showed the deepest aversion to such a policy and charged it as discrimination and therefore unconstitutional. Then there were those who were convinced that wisdom would induce the government to undertake a system of public improvements for the sake of further development of the resources of the nation; such as connecting the Great Lakes with the Hudson River by a canal, the opening of the great West by a system of road-building, etc. There were others who agreed to the value of such improvements, but denied to the general government the right to undertake the enterprise. A careful analysis of the argument upon the questions will reveal the real points of dispute. It was not a difference of expedience, but of power. Those who opposed the propositions to adopt the necessary means to inaugurate the policies, did not act on the ground that they were unnecessary, so much as on the ground that they were unconstitutional. They maintained that a National Bank doing business within the limits of a State without the latter's consent was not warranted by the Constitution and was in violation of the sovereignty of the State. Similarly, they urged that the operations of a protective tariff from its very nature would discriminate between persons and States; that it was local, and granted special privileges to favored businesses, and therefore operated to favor the few as against the many; the manufacturing States against those devoted to agriculture. Similarly, they urged that a system of internal improvements at national expense favored the States in which the improvements were made at the expense of others. They also alleged that an application of national funds to the proposed improvements within the States placed the State in that degree under the control of the nation, and thereby interfered with the sovereignty of the State.

Basis of alignment. With the annihilation of the Federalist party as an organized opposition, and with the government in the hands of the followers of Jefferson, so firmly

intrenched in power that they feared no embarrassment from opposition, when party lines were entirely eliminated, — these three questions were the occasion for a new alignment of parties. As in other instances the line of demarcation is that which separates the advocates of the Jefferson theory from those of the Hamilton theory, or the Virginia theory from the Massachusetts theory. This basis of alignment is recognized when it is observed that the advocates of any one of these questions are generally advocates of all the questions; while the opponents of any one are opponents of all. The argument of one, placed upon a constitutional basis, served for all; hence the alignment between the national and the Federal theory.

Importance of the Judiciary. These contentions being placed upon a constitutional basis, and the Supreme Court of the nation being the final tribunal in cases of law and equity arising under the Constitution, subjected this court to severe criticism from the losing parties in the contest. Hence the body of decisions handed down from this court has been more effective in establishing the national theory than all other peaceful events in our history.

The Bank. The bank agitation was first in time. The Bank was a favorite institution of Hamilton. Perhaps no single recommendation of the great financier was met with firmer opposition than his project of a National Bank in 1791. Its charter expired in 1811. The opposition grew with the years, and a renewal of the charter was defeated until 1816, when the financial exigencies forced upon the party which had been its enemy the establishment of the first National Bank in the United States, with a capitalization of $35,000,000, and the right to continue on the same charter twenty years. The central office of the Bank was located in Philadelphia. Pennsylvania, through her legislature, declared by almost a unanimous vote that an amendment should be made to the Federal Constitution denying to Congress the authority to

establish any corporation like a Bank outside of the District of Columbia. This resolution was forwarded to the several States with a request to consider its importance. Four States —Ohio, Indiana, Illinois and Tennessee—approved it, while nine other States disapproved it.

In South Carolina. South Carolina, whose conduct was soon to attract the eyes of the nation, declared in 1821 that, "We apprehend no danger from the exercise of the powers which the people of the United States have confided to Congress, but believe that in the exercise of these powers that body will render them subservient to the great purposes of our national compact." It therefore refused concurrence in the effort to secure the amendment.

In Ohio. One of the most interesting positions was that of Ohio, which, in an elaborate argumentative pronouncement, affirmed the Virginia and Kentucky Resolutions. The State took the position that the true theory of the government was declared in the Resolutions of 1798 and 1800. It recited the fact that these resolutions were an issue in 1800, and the people, the final arbiter of law, had pronounced decisively in their favor. It was asserted that between the decree of the Supreme Court and the decision of the people, the legitimate source of all powers, the former must give way. It cited the case of Marbury against Madison, which was ignored by President Jefferson, as a precedent for like treatment of the Bank decision in 1819, in the Maryland case. It declared it to be the duty of the general assembly of the State to take ulterior measures for asserting and maintaining the rights of the State by all constitutional means within their power. It also recommended that provisions be made forbidding by law the keepers of the jails receiving into their custody any person committed at the suit of the Bank of the United States or for any injury done to them. It adopted a series of seven resolutions. The first one declared, "This assembly do recognize and approve the doctrines asserted by the legislatures of

Kentucky and Virginia in their resolutions of November and December, 1798, and January, 1800, in respect to the powers of the governments of the several States that compose the American States, and the powers of the Federal government." It further declared its determination to tax the Bank of the United States, if located within the State. It protested against the rights and "powers of the sovereign States," being determined in the courts of the United States. In the case of Osborn vs. United States the authority of the nation was vindicated.

In Massachusetts. With the ending of this unfortunate episode the Bank was permitted to proceed with little embarrassment. However, it was the target for certain statesmen. One of its implacable enemies who was sworn to destroy it was Andrew Jackson. He refused it any respite. His shafts were frequently hurled with deadly aim. When he became the head of his party and later the head of the nation, he opened his batteries upon the already weakening citadel and denied all quarter until the besieged begged for an armistice, which was granted only for the purpose of delivering the later stunning blow from which the Bank never recovered. Its charter expired in 1836, and with its expiration the institution ceased to exist, although it could count in its defense some of the greatest statesmen of the time.

New leaders. The Republican régime up to 1824 brought to the fore new men who soon became new political factors. During this period appeared that remarkable triumvirate of penetrating statesmanship, political oratory, and partizan leadership, as represented by the "great trio," Calhoun, Webster and Clay. With such men in the forum, unanimity in party action was impossible. The pitiable condition of the Federalist party at this time left Webster and Clay with the alternative of quiet assent to the policy of the party in power or in open hostility to it and the consequent repudiation. Calhoun's brilliant parts won for him the confidence of those

in authority and opened the way for preferment. The war of 1812 had convinced him of the need of a strong navy. It also allayed his opposition to the Bank proposition of 1816. It also led him to adopt a system of road-building as a means of national defense. On the same basis his position in favoring the policy of protection is explained. He declared in a public address, "The question relating to manufactures must not depend upon the abstract principle that industry left to pursue its own course will find in its own interests all the encouragement that is necessary. Laying the claims of manufacturers entirely out of view, on general principles, without regard to their interests, a certain encouragement should be extended at least to our woolen and cotton goods." His argument for the adoption of this policy in April, 1816, was as lucid as that of Hamilton, and as forcible as that of Clay; his program would have served as a platform for the Whig party when it claimed the consideration of the public. It is a stretch of credulity to believe that while Calhoun was urging the adoption of the principle of protection its ablest opponent was Daniel Webster whose argument was cast upon a high constitutional plane. He maintained, "It is the true policy of the government to suffer the different pursuits of society to take their own course, and not to give excessive bounties or encouragements to one over the other. This, also, is the true spirit of the Constitution. It has not, in my opinion, conferred on the government the power of changing the occupations of the people of different States and sections, and of forcing them into employments." Like Jefferson, with whom he seldom agreed, he deplored the drift from the pursuits of agriculture to those of manufacture. "When the young men of the country," he said, "shall be obliged to shut their eyes upon external nature, upon the heavens and the earth, and immerse themselves in close and unwholesome workshops; when they shall be obliged to shut their ears to the bleating of their own flocks upon their own hills, and the voice of the lark that

cheers them at the plow, that they may open them in dust and smoke and steam to the perpetual whirl of spools and spindles and the grating of rasps and saws, — such a time I am not anxious to hasten in America."

The transitional period. By 1824, when Calhoun was approaching the time when he looked to becoming the Chief of the nation himself, his views on the three dominant questions were undergoing marked alterations. Within four years he became the author of the famous "Exposition," the most advanced State rights document since the Kentucky action in 1798. No less radical and rapid was the change in Webster. At no time were they together except when they met on the political highway going in opposite directions. No one would seriously attempt to deny the charge of inconsistency in both of these men. It was open and notorious. They both have explained their positions. Calhoun attributed his position to the enthusiasm of youth and the influence of the conditions following the war. Webster explains his change as due to the change of conditions which led his constituency to adopt the restrictive measures. The pronounced views which placed these men at the head of two distinct policies were not simply theoretical, but related to the practical remedy to be applied. It was the startling announcement by Calhoun that a law of the Federal government might constitutionally be ignored by the State that drew the lines. Here opens another act in the drama representing the contest between the nation and the State. Clay was decidedly with the national policy. Not as decisive a theorist as either, he assumed the rôle of peacemaker. However, he maintained his position of a strong national supporter. He believed in the constitutional supremacy theory as against the State rights theory. His advocacy was without acrimony and revealed the spirit of "give and take."

It is frequently asked whether there is a rational explanation for the attitude of South Carolina's position in 1828, 1832, and 1860–65.

Physiographic conditions. The complexion of South Carolina political theory at the close of the eighteenth century was due, primarily, to physiographic causes; and, secondarily, to the manner and character of settlements.

For many years after the first settlement on the coast at Charleston, the population was confined to the coast regions, including the river bottoms near the coast. The expansion was confined to that portion adapted to the cultivation of rice, indigo, tobacco and cotton, although the latter article was not extensively cultivated until later, when the sea-island fiber was introduced.

The character of the soil and climate, and the consequent sanitary conditions, made slavery a valuable commodity for this region. The part of the State composed of the districts of Charleston, Colleton, Beaufort, Williamsburg, Horry and Marion was known as the Low Country, while the rest of the colony was called the Up-country. The latter portion was composed of at least two distinctly different sections. The soil of these sections was thinner than that of the Low Country and not adapted to the same uses. The Low Country invited the large estates and the system of plantation, while the Up-country invited the small farm and free labor.

Influence of Settlements. The character of settlement of the two sections was significant. To the Low Country came the English Cavalier, and with him his habits. The vast unoccupied country offered opportunities to transplant and establish in a new world a kind of English nobility. Back of the endeavor were men distinguished at home. While it is true the plan did not succeed, a flourishing colony was established, a fair trade resulted, a good market for slave labor was created, and Charleston became a center of culture, with the Established Church the dominant factor in the government.

The Up-country was peopled not so much by the Charleston kind, but by Scotch-Irish from the North and Germans from Pennsylvania, as well as some English through the

Charleston gateway. Here a different sort of enterprise flourished; not the large farm, hence not slave labor; not so entirely agricultural but manufacturing; not so much foreign but more domestic commerce. These conditions placed little limit upon the growth of this section. Immigration to this region was great. It was not black but white. Soon the Up-country had the greater population.

Unequaled apportionment. The government of South Carolina had always been strongly centralized. Originally it was a government largely by the church over the parish system. Until the spread of population into the back country, little disturbance was heard. But this rapid growth made the question of representation in the legislature a serious one. When the laws were made they were made in the interests of the Low Country by reason of its greater importance at the time. The old arrangement held over when the new country had fully three-fourths of the white population. In other words, the Low Country with but 28,644 white people had twenty senators and seventy representatives, while the Up-country with 111,534 white people had but seventeen senators and fifty-four representatives.

Equitable apportionment attempted. Every attempt to remedy this unequal apportionment was bitterly resented by the Low Countrymen. The Up-countrymen did not insist upon a representation based upon white population, but desired some concessions. Finally a convention was agreed upon, but the Up-country was allowed only forty delegates out of 184, and most of these were chosen from the English from Charleston. The plan adopted was wholly in favor of the Low Country.

From 1784 on, the question of separation was mentioned. State Sovereignty was spoken of. Equality of rights was discussed.

Finally a compromise was reached in 1790. By it Charleston with a white population of 15,402 had seventy-one mem-

bers in the legislature, while Ninety-six with 33,506 white had only sixteen. This plan gave the power to that portion of the colony or State which had always ruled.

The real dispute. To the election of Jefferson in 1800, the interests of South Carolina were mostly confined to local matters. The conflict was between the older and newer sections of the State; between the English Cavalier, and the mixture of Scotch-Irish, German, and an effusion from the Low Country; between the landlords who controlled the rice plantations and the small farmer and the household manufacturer; between the slave aristocracy of the Low Country and the free labor of the Up-country. An attempt to unify them under one government revealed the problem. The old or Low Country section necessarily fell in the rear in the race of population. If the plan of government was to be based upon population, then the wild, bold, pioneer of the frontier would take control of matters. The progressive new country ultimately took control. Its first victory was when it succeeded in removing the capital from Charleston to Columbia.

South Carolina in 1800 compared with itself in 1824. It appears that the national theory held sway in the State much of the time up to 1824. In December of that year the House of Representatives of the State resolved, "That all power is inherent in the people. . . . That the people have conferred no power upon the State legislature to impugn the acts of the Federal government." This declaration shows that the State Rights element had not yet secured the control of the House. In December of 1825 the House declared against both the tariff and the policy of internal improvements. It resolved, "That it is an unconstitutional exercise of power on the part of Congress to tax the citizens of one State to make roads and canals for the citizens of another State." It also resolved, "That it is an unconstitutional exercise of power on the part of Congress, to lay duties to protect domestic manufactures."

Progress of State rights sentiment. The following year Virginia, acting on the suggestion of Jefferson, reaffirmed the principles of the Resolutions of 1798, and declared that the government could not constitutionally levy taxes for the purpose of internal improvement, or for the sake of protection of manufactures. In the same resolutions it solemnly declared its attachment to the union of the States. In 1827 Virginia solemnly protested against the attempt of the government to adopt a system of internal improvements, and of protection to manufactures. The tariff bill failed of enactment in this year by the casting vote of Calhoun, whereupon the friends of the measure met in convention at Harrisburg, Pa., and memorialized Congress on behalf of domestic industry to lend the necessary aid. It also appealed to the people at large to support such a measure. This effort to unify action, for the accomplishment of the desired legislation, aroused the opposition.

South Carolina on the tariff issue. South Carolina became the storm center. Addresses poured into the legislature from various parts of the State, some of them declaring that the State was a part of the Union for the sake of taxation, and nothing else. The State legislature adopted resolutions that the attempted tariff legislation and the internal improvement measures were unconstitutional. The State took a strong position against the submission of "any question of disputed sovereignty to any judiciary tribunal." Resolutions sympathizing with the efforts of South Carolina and condemning the Harrisburg convention were adopted by Georgia, North Carolina, and Alabama. All these States took the same view of the constitutionality of the attempted legislation. On the contrary, Ohio, New Jersey, Pennsylvania, Rhode Island, New York, Massachusetts, and Indiana defended the right of the government to enact such laws, and most of the States named recommended an increase of the tariff. On the 19th of May, 1828, the tariff measure, called by Randolph the

"Bill of Abominations," became law. This legislation was enacted in the face of the loudest protests from the dominant element in the South. The storm centers became numerous. The entire Southern section, which felt the drain of such policy, was alarmed. At the assembling of the various legislatures, the several governors made the national policy a matter of special condemnation, and recommended remedial measures. The legislatures of Virginia, South Carolina, Georgia, Alabama and Mississippi entered solemn protests.

The exposition. The one significant protest was that of South Carolina, written by Calhoun, and known to history as the "Exposition." This document is the formal pronouncement of the doctrine of "nullification." Two Southern States, Kentucky and Louisiana, defended the measures of the government against the protest of their sister States. The hand of Clay is seen in the attitude of Kentucky, and the sugar interests determined the action of Louisiana. The nullification doctrine proved a misfortune to the opposition to the tariff law. It was regarded irrational by many even in the State where it had been promulgated. The fight came on in convening a convention to pronounce upon the feasibility of such a remedy.

Sentiment divided. To order such a convention it required a two-thirds vote of the legislature. The Nullificationists were not strong enough to order the convention. In the debate the brilliant Hayne shone. He was ably supported by Governor Miller. These leaders headed the forces for nullification, Senator Smith and Judge Drayton led against it. On the defeat of the call for a convention, the legislature adopted the State rights clauses of the Resolutions of 1798. The Nullificationists quoted Madison in support of their scheme. This brought out letters from the aged statesman declaring that nullification had no sanction in the resolutions from his pen.

Activity in 1830-31. In December, 1830, South Carolina resolved that when a State suffering under oppressive law

shall lose all reasonable hopes of redress from the wisdom and justice of the Federal government, "it will be the right and duty of the State to interpose in its sovereign capacity, for the purpose of arresting the progress of the evil occasioned by the said unconstitutional acts." The acute situation occasioned by this attitude of South Carolina, was augmented by two notable conventions in the latter part of 1831: namely, the Free-trade convention at Philadelphia, which was attended by delegates from fifteen States; and secondly, the Protection convention in New York, where were assembled at least five hundred friends of protection, representing twelve States. The aggressiveness of Calhoun, with prestige born of sincerity of purpose, long and brilliant public service, and his well-deserved political preferment, both in State and nation, directed the mind of the nation toward him and toward the operations in his State.

Hayne and Webster. South Carolina was to attract new interest in the national capital. Calhoun had placed in the forefront as champion of his favored theory of State Sovereignty, Robert Y. Hayne. As the presiding officer of the Senate Calhoun had estimated the forces and measured the various abilities of his opponents. His great rival, Webster, by his brilliant career already achieved before the Bar of the Federal Supreme Court, in the forum, and on the platform, loomed up in the near distance as the nation's champion of constitutional supremacy. In the early part of the year 1830, the occasion was offered, when the two theories were to be pitted against one another. Rarely were two gladiators in the ring more favored by circumstances. The public interest was at white heat. The occasion could not be more opportune. While the question of debate related to the discontinuance of further sales of public lands, it involved a comprehensive discussion of Federal relations, and the very foundations of the ultimate interpretation to be placed on the Constitution. The issue was so clearly drawn that it admitted of

no ambiguity. The preliminary excitement had passed from the Capital city to the remote parts of the country. The whole nation was ready for the duel. The two participants possessed all that nature could do for man. Both were in the zenith of their careers. Behind them stood proud constituencies. In the unique character of our system, each found his supporters in every part of the country. However, it will be observed that Webster stood for the Hamiltonian theory, which at this time was identified with the Northern section of the country, while Hayne represented the Jeffersonian theory, which was now fully identified with the Southern section of the country.

Jefferson and nullification. Fairness would compel the acknowledgment that Hayne went further toward State rights than the Virginia theory justified. His position would be better named if called the Calhoun theory. Benton denies that Jefferson ever committed himself to such a theory. While the terms "null and void," and "State Sovereignty" were common in Jefferson's phraseology, still he cannot be said to be the real author of the Calhoun doctrine, which logically terminated in Secession. The Webster-Hayne debate cleared the political sky. Speculation gave way to preparation. Forces were shifted with a view to creating public sentiment. Mass meetings and conventions became the order of the day.

Episode of the Jefferson banquet. The anniversary of the birth of Jefferson, April 13, 1830, was chosen by the Southern friends as an opportune moment for the promulgation of the nullification doctrine; they hoped thereby to strengthen their contention by the force of his great name and influence. The day was celebrated in the city of Washington. The President, Vice-President, and three members of the Cabinet were invited guests. A glance at the proposed toasts, twenty-four in all, disclosed the hand of Nullification. This fact, not generally known before the arrival of the guests, angered many and

endangered the success of the celebration. At the close of the regular toasts, President Jackson was called upon, and the grizzled hero of many sanguine fields, with the burdens of the execution of his country's laws upon him, volunteered a toast, routed the friends of nullification, and electrified the whole country, by declaring, "Our Federal Union, it must and shall be preserved." Calhoun, not to be outdone in his determination to secure for the States what he believed to be their rights, volunteered a no less famous toast, namely: "The Union: next to our liberty the most dear: may we all remember that it can only be preserved by respecting the rights of the States, and distributing equally the benefit and burthen of the Union." Thus the contention had been transferred from the Senate to the Executive department; from a contest between senators to one between the President and the Vice-President.

The Jackson letter. An invitation from friends of the Union to the President to attend a Union dinner, to be given at Charleston, July 4, 1831, called forth a reply in which the President referred to the attitude of a certain element in the State which threatened the Union, and intimated his determination to enforce the laws. This letter came into the hands of the governor of the State who referred it to the legislature. This body resented the spirit of the letter. It formally inquired, "Is this legislature to be schooled and rated by the President of the United States?" "Is it to legislate under the sword of the Commander-in-Chief?" It then declared, for the first time, the fatal doctrine of "Secession." "This is a confederacy of sovereign States, and each may withdraw from the confederacy when it chooses. Such proceedings would neither be treason nor insurrection, nor a violation of any portion of the Constitution. It is a right inherent in a sovereign State, and has not been delegated by the States of this Union."

Proceedings in Congress. Events were rapidly moving in South Carolina. Congress revised the tariff law in July, 1832,

but not to the satisfaction of the Carolina delegation, which notified their State that in their judgment the protective policy had become the settled policy of the nation and all hope for relief had irrevocably passed. Niles, in quoting the delegation's communication to their State, said: "They leave it to you, the sovereign power of the State, to determine whether the rights and liberties which you received as a precious inheritance from an illustrious ancestry shall be tamely surrendered without a struggle, or transmitted undiminished to your posterity."

Proceedings in South Carolina. The State's answer was a convention which met at Columbia, in November, 1832. It approved of the numerous expositions of Calhoun, as published in various articles, and adopted the famous Ordinance of Nullification. The most significant feature of this procedure was that it did not simply announce a political theory as had been done so frequently by most of the States at one time or another, but entered the domain of legislation and enacted an ordinance with the force of law, nullifying specified enactments of the Federal government. It denied to any Federal officer any authority to enforce the Federal enactment specified, and declared it the duty of the legislature of the State to pass necessary measures to enforce the ordinance. It enacted that no question arising from the interpretation of this ordinance shall be appealed to the Federal courts. It also required all persons (except members of the legislature) now holding office in the State, either civil or military, to take an oath to support the ordinance, and further declared that all persons to be elected to office must, before they can enter upon their duties, take the same oath. This instrument closed as follows:

> And we, the people of South Carolina, to the end that it may be fully understood by the government of the United States, and the people of the co-States, that we are determined to maintain this, our ordinance and declaration, at every hazard, *do further declare* that we will not submit to the application of force, on the part of the Federal government, to

reduce this State to obedience; but that we will consider the passage by Congress, of any act authorizing the employment of a military or naval force against the State of South Carolina, her constituted authorities or citizens, or any act abolishing or closing the ports of this State, . . . or any other act on the part of the Federal government to coerce this State, shut up her ports, destroy or harass her commerce or to enforce the acts hereby declared null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union; and that the people of this State will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connection with the people of the other States, and will forthwith proceed to organize a separate government, and to do all other acts and things which sovereign and independent States may of right do.

State against nation. It remained to be seen whether the State legislature would attempt to carry into effect the fatal policy. All doubts were soon removed, for in three days the legislature reassembled and proceeded to enact necessary provisions to make the ordinance effective. Thirteen days after the action of the legislature, the proclamation of President Jackson, announcing his determination to enforce the laws of the government, was heralded to an over-excited public. This great State document should rank with the famous decisions of Judge Marshall.

The legislature replied to the President's proclamation in a lengthy series of resolutions, denying to him the authority assumed in his decree, and reaffirmed the doctrine of Secession. It resolved:

That each State of the Union has the right, whenever it may deem such a course necessary for the preservation of its liberties or vital interests, to secede peaceably from the Union, and that there is no constitutional power in the general government, much less in the Executive department of that government, to retain by force such State in the Union.

It further declared that the primary allegiance of the citizen was to the State. It charged the President with countenancing the conduct of Georgia when that State was experiencing the same trouble. It also denounced his present

attitude, if submitted to, as tending to the establishment of monarchy, and ended by resolving that "the State will repel force by force, and relying upon the blessings of God, will maintain its liberties at all hazards." On the following day the legislature adopted a resolution calling for a convention of all the States to consider the manner of concerted action to secure their rights. The President requested of Congress the necessary powers to deal with the new emergency. In response the "Force bill," denominated by its enemies as the "Bloody biil," was passed by Congress. This bill enabled the President to enforce the laws in the threatening State. General Scott with a military force had been ordered to the State and two war vessels were also sent to the seat of disturbance.

Conduct of States. However, the decisive stroke, which carried death to the scheme, was the attitude of the several States toward the convention proposed by the nullification leaders. Three States, Ohio, Massachusetts and Delaware replied that such a convention was inexpedient. Two States, both Southern, Georgia and Alabama, favored a convention of Southern States to propose amendments to the Constitution, but denounced the scheme of nullification. Six States, New York, New Jersey, Pennsylvaina, Ohio, Maryland and Kentucky, denounced the Secession proposition. The response to the proposition for a convention was almost unanimous in condemnation of the policy of South Carolina. The position of the Southern States was significant. Georgia resolved, "That we abhor the doctrine of nullification as neither a peaceful nor a constitutional remedy, but on the contrary, as tending to civil commotion and disunion."

Alabama declared it to be "unsound in theory and dangerous in practise." It further declared, "That as a remedy it is unconstitutional and essentially revolutionary, leading in its consequences to anarchy and civil discord, and finally to the dissolution of the Union."

North Carolina solemnly declared "a devoted attachment to the Federal Union, believing that on its continuance depend the liberty, the peace and prosperity of the United States." It resolved that nullification "is revolutionary in its character, subversive of the Constitution of the United States and leads to a dissolution of the Union."

Mississippi vindicated the action of the President in opposition to the doctrines of South Carolina. It put itself on record "We oppose the nullification. We regard it as heresy, fatal to the existence of the Union. It is resistance to law by force, it is disunion by force, it is civil war."

Virginia took a middle ground. She affirmed, "That they continue to regard the doctrines of State Sovereignty and State rights, as set forth in the Resolutions of 1798, and sustained by the report thereon of 1799, as a true interpretation of the Constitution of the United States, and of the powers therein given to the general government; but they do not regard them as sanctioning the action of South Carolina, indicated in her said ordinance; nor as countenancing all the principles assumed by the President in his proclamation, many of which are in direct conflict with them."

Crisis passed. It is evident that the gravity of the situation was greatly relieved by the attitude of the several Southern States. South Carolina appeared to be making preparations for an armed conflict. Senator Hayne had left the Senate to become the executive head of his State, and Vice-President Calhoun had left his position to accept an election to the Senate, preferring to be a leader of that body in legislation to being a mere figurehead as its presiding officer. Indications were plentiful that Civil War was about to break. At this juncture the peculiar abilities of Henry Clay came into play and by the means of compromise, for which he was so admirably fitted, the crisis was passed. Thus closed the third act in the drama enacted, on the political stage with the general government and the States as the star actors.

CHAPTER VII

NOMINATION PROCESSES

Unwritten law in the United States. It is a popular error to presume that the government of the United States is one of written law. Unlike England it has a written Constitution but like the mother, the daughter heeds the voice of custom and many of her operations have no other sanction. Most if not all of the party machinery of the government has no other force than custom.

Throughout the history of the country, various methods have been employed for placing the machinery of the government in operation. The history of these methods admits of an interesting investigation. From the earliest times the colonists assuming a sort of democratic form of government — especially those colonies which adopted the charter government — had occasion to observe some method of selecting officers to fill the various positions. In New England, the domicile of the "town meeting," no difficulty was encountered. These democratic centers like so many nerve centers served the purpose, not only for the development of political enthusiasm, but for the organization and direction of it. The first real important step in the organization was the selection of the man to fill the office.

Account of an early caucus. One of the earliest accounts of that process is from the racy pen of John Adams, in his diary in 1763. He says:

This day learned that the Caucus Club meets, at certain times, in the garret of Tom Dawes, the adjutant of the Boston Regiment. He has a large house, and he has a movable partition in his garret which he takes down, and the whole club meets in one room. There they smoke tobacco till you cannot see from one end of the garret to the other. There they drink flip, I suppose, and there they choose a moderator, who puts questions to the vote regularly; and selectmen, assessors, collectors, wardens, fire-wards, and representatives are regularly chosen before they are chosen in the town. Uncle Fairfield, Story, Ruddock, Adams, Cooper, and others are members. They send committees to wait on the Merchants' Club, and to propose and join in the choice of men and measures. Captain Cunningham says they have often solicited him to go to those caucuses. They have assured him benefit in his business.

This interesting description throws light upon the peculiar political activity of that section of the country.

In vogue in New England at an early date. It is asserted by authority that this caucus method was in vogue as early as 1724, when it is said that the father of Samuel Adams and twenty others frequently met in caucus and laid their plan for introducing certain persons into places of trust and power. "When they had settled it they separated and used each to their particular influence with his own circle. He and his friends would furnish themselves with ballots, including the names of the persons fixed upon, which they distributed in the days of the election. By acting in concert, together with a careful and extensive distribution of ballots, they generally carried the elections to their own mind. It was in like manner that Samuel Adams first became a representative of Boston." The caucus was a favorite method of the centers up to the point when it was declared unrepresentative and dictatorial. The growth of numerous centers within the same Commonwealth necessitated some plan which sought unity in action.

Conditions in Pennsylvania. The wide extent of territory of a single State like Pennsylvania, and the sparsely settled condition of the States, generally, necessitated some other method. Frequently conferences of self-appointed leaders

in the localities were held. Later a system of correspondence, not unlike the "Committees of Correspondence" in Massachusetts and Virginia, was begun. This plan was adopted in Pennsylvania to secure some concert of action between the East and the far-away West. With the growth of the population better plans came into operation. Down to the inauguration of the national government, no well-defined method was in general use other than that mentioned.

Some method of nomination imperative. When the Constitution went into effect, its provisions for numerous officers and its inferences relative to yet more numerous State officers demanded a plan for putting before the voter the name of the aspirant for office. There were few newspapers in the centers of population. A newspaper could not exist outside these centers. In fact some of the States could not support a paying circulation. Numerous experiments were made with the same unhappy result. Up to 1800 most of the newspapers were controlled by adherents to the Federalist party. In that year some publications were started in the interest of the Republicans. Through them local party organizations were effected co-extensive with the political units. In a short time by the effectiveness of the local political machinery of the Republicans, the opponents of the recent powerful Federalists carried every State but two in the National campaign.

Party machinery a natural creation in the United States. The American system was designed to accomplish such ends. The numerous national offices to be filled, and the various State, county, municipal and township offices which are filled by the citizens in the frequent elections, guaranteed a continuous campaign throughout the entire nation. At that time necessary enthusiasm and unity of action were the chief needs. How to secure them was a matter of concern to the public-spirited citizen. This concern was satisfied by the local political machinery. Through the various local organizations and the establishment of party organs in the main centers of

population, as mediums of communication, the whole country was enlisted in one common cause, and party interest became all-pervasive. By these means the whole people became identified with one or the other party, and the voters for days preceding election day were arrayed against one another like the forces of war approaching a battle-field. Each side chose its leaders with the one purpose — victory. The line of battle was studied with the same purpose. The wide extent of territory and the variety of interests involved, and the necessity of united effort made the selection of the standard-bearer one of the most important matters of the campaign. Especially was this true in the case of the election of the President of the United States for every election since the second election of Washington was the occasion of a spirited contest between parties. This contest extended to the remote parts of the country and involved every State of the Union and all parts of each State.

Selection of candidate important. The manner of selecting a leader, who would unite all the forces in the party, was of no small consequence. The quality of strength required in one section might prove weakness in another. The wide separation of the remote parts of the country was a constant danger of sectional disputes. The most rational plan suggested for solution was the "congressional caucus." It was thought that the representatives fresh from the people, in combination with the senators, would best know the wishes of the people and most fairly represent them. Their function as legislators required their commingling at the seat of government and enabled them to consult freely with regard to the welfare of the country as no other body of citizens could do. These considerations, in conjunction with the fact that every State was represented presumably by its best men, led to the selection of the presidential candidate by this "congressional caucus." Washington was selected by universal consent. In 1792 there was expressed quite a universal desire that he would

accept a re-election, which he was eventually persuaded to do. Not until the French sympathizers organized their opposition to Washington's policy of neutrality did party spirit assume the attitude of strenuous opposition.

Original purpose of the electoral college. At first it was intended that the men chosen to constitute the electoral college should employ discretion in their choice of the President. That reduced the general interest in the election, since the voter was not casting his vote for the President, but rather for a delegate who was to select the President. This fact will account in part for the very light vote cast for the electors in the early elections. Elbridge Gerry, a Jeffersonian Republican, wrote to Jefferson, stating his desire to vote for him for President, but from the fear that he (Jefferson) might receive more votes than Adams and thus defeat the latter, he would be compelled to withhold his vote. Here is the beginning of the practise of the unwritten law, which is universally observed to-day, namely, to allow the people to name the candidate for whom the electoral college are to vote. This custom transferred the interest from the voting of the electoral college to the popular election of the electors, which is in reality the election of the President.

First two elections. It appears that some uneasiness was felt in the second election, over the possibility of Adams running ahead of Washington, thus making the former President and the latter Vice-President. There is little doubt that Hamilton had correspondents in two or three States, trying to forestall such a result, advising the withholding of the vote from Adams to insure his falling below Washington. The result showed the following:

Washington, the entire vote, 132; Adams, 77; Clinton, 50; Jefferson, 4; Burr, 1.

Third election. The general belief that Washington would decline a third election was confirmed by his "Farewell Address," in September, 1796. It was conceded that Adams

would be the Federalist candidate to succeed Washington and that Jefferson would be the Anti-Federalist or Republican candidate. While Hamilton did not oppose Adams, it is well known that he personally preferred another candidate. Hamilton foresaw a party struggle, and he feared the ability of Adams to win over Jefferson and such failure in his mind was to be avoided at all hazards.

Congressional caucus. A group of Federalists, which has been denominated the "Individual Cabal," decided that Adams should be the Federalist candidate. This is called by some authority a congressional caucus, but it scarcely deserves that name. The congressional caucus is really a Republican institution. It began in the year 1800, when in Marche's boarding-house in Philadelphia, forty-three Republican members of Congress met to decide upon the running mate for Jefferson. It was conceded that Jefferson would be the candidate for President and there is no record of an action to formally nominate him. But the man for second place was a matter of much interest. At this time there were thirty senators, and one hundred and five representatives, a majority of whom were Federalists.

Burr as a candidate. In the previous election Adams defeated Jefferson by three votes. It is interesting to note the vote. Adams and Pinckney were the Federalist candidates. The former received seventy-one votes, and the latter fifty-nine. Jefferson and Burr were the Republican candidates. Jefferson received sixty-eight votes, and Burr thirty. The result showed a weakness in the candidacy of Burr. His own State went for Federalist candidates, and Jefferson's State cast its vote for Samuel Adams for second place, giving Burr, Jefferson's running mate, but one vote. This treatment of Burr by Jefferson's own State was ground for suspicion, and Burr resented it.

Hamilton and Adams. In 1800 an attempt was made to switch Adams on behalf of C. C. Pinckney of South Carolina.

A letter, written by Hamilton, fell into the hands of the Republican leaders. This celebrated letter was a criticism of the conduct of Adams as President of the United States. On the advice of Colonel Burr, extracts from it were sent to Duane, editor of the *Aurora*, who at once published them. It appears that Hamilton, who, to clear himself of the charge of disloyalty, published his letter in full with comments, foresaw the inability of Adams to carry South Carolina and was ready to make concession for the sake of the election of Pinckney, although it might be at the expense of one of the candidates. He seemed to think that Pinckney could carry South Carolina with Jefferson, but not with Adams. In that event the election might result in Pinckney and Jefferson, with the former in the lead, which would be a Federalist victory. It is asserted that the premature publication of the extracts caused the loss of South Carolina to the Federalists. The vote stood: Jefferson, seventy-three; Burr, seventy-three; Adams, sixty-five; Pinckney, sixty-four. The eight votes of South Carolina decided the contest.

The election of Jefferson. This tie vote between the two Republican candidates was the first instance of failure to elect a President. It threw the election into the House of Representatives, in pursuance of the Federal Constitution. On such occasions the vote is taken by States, each State having but one vote. On the first ballot the vote stood:

Jefferson — New York, New Jersey, Pennsylvania, Virginia, North Carolina, Kentucky, Georgia, Tennessee — eight.

Burr — New Hampshire, Massachusetts, Rhode Island, Connecticut, Delaware, and South Carolina — six.

It will be observed that all the Federalist States, except New Jersey, supported Burr in the House, while all the Republican States, except South Carolina, supported Jefferson. Vermont and Maryland divided their votes.

On the final ballot Vermont and Maryland were counted for Jefferson, which gave him ten votes, while Delaware voted

blank, and South Carolina gave no vote, which left Burr with but four votes.

Out of the 106 members of the House, during the balloting, but fifty-one voted for Jefferson at any one ballot.

Caucuses in 1804. As early as 1802, it was believed that Rufus King would be a presidential candidate. At a public dinner in Washington it was decided to support King and Pinckney. Later, it was agreed that Pinckney was to stand first, or be the candidate for President, and King for Vice-President. The Republican caucus took place in Washington, in February, 1804. It was called to select a candidate for Vice-President. There was no opposition to the candidacy of Jefferson. There was determined opposition against Burr, led by Madison, Gallatin and others, of whom no one was more opposed to him than Jefferson. There were 108 members present in the caucus. Clinton received forty-seven votes, a majority of those voting, and thus became the regular caucus candidate on the ticket with Jefferson.

Election of 1804. The result of the election had a bad effect upon the Federalist party. It obtained only fourteen votes for its candidate, while its opponents had one hundred and sixty-two. It was at this juncture that the Federalist conspiracy was concocted for the separation from the Union of the New England States. And it was in this connection that the leadership of Burr was sought to win the State of New York to the support of that ill-advised experiment. For some time it was doubted whether the remnant of the party should put forth a candidate in the election in 1808. There was some opposition developing against the Administration of Jefferson, especially on his embargo policy, which promised the opposition some success, especially in the State elections. Governor Gore, George Cabot and others, were appointed as a committee of correspondence to unify opinion upon plans to be adopted. Finally it was decided to run Pinckney and King, the candidates who headed the party in the last election.

This decision was not reached by a caucus, but by correspondence.

The first real caucus. The Republican caucus in 1808 is known in history as the first regular caucus for the selection of a presidential candidate. This is explained by the character of its call. Stephen R. Bradley of Vermont had presided at a Republican caucus, which had authorized him to call subsequent caucuses. His call was couched in authoritative language. It ran, "In pursuance of the powers vested in me, as president of the late convention of the Republican members of both Houses of Congress," etc. He called a caucus of the Republican members in the Senate chamber for the purpose of nominating candidates for President and Vice-President. Bitter opposition to the call at once developed. Virginia was the seat of the fiercest opposition. Gray, a congressman from that State, denounced the arrogance of Bradley. He declared: "That I cannot consent, either in an individual or a representative capacity, to countenance, by my presence, the midnight intrigues of any set of men who may arrogate to themselves the right which belongs only to the people, of selecting proper persons to fill the important offices of President and Vice-President." This vigorous opposition was seconded by John Randolph. It spread far and wide. Many influential men of New York denounced it. However, the caucus was held at the stated time with ninety-four members in attendance. Five of them refused to take part in the proceedings. There was no representative from Delaware. Only one member from New York was present. Not half of the Pennsylvania representation attended. The ballot for candidates for President stood: Madison, eighty-three; Monroe, three; and Clinton three. The entire vote was cast for Clinton for Vice-President, after a complimentary vote had been given to Langdon of New Hampshire, Dearborn of Massachusetts, and John Quincy Adams of the same State. Out of the 136 Republican members of this Congress, eighty-nine took part in the caucus,

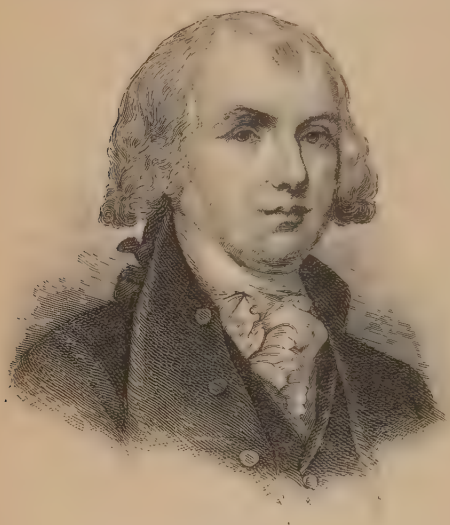
and eighty-three united upon Madison as the successor of Jefferson.

Randolph's opposition. Randolph, of Roanoke, was by nature inclined to oppose whatever those in authority were attempting to do; hence his strenuous opposition to Jefferson in his second administration, and his machinations to defeat the President's purpose to choose his own successor. It was well known for months before the end of his second term that Jefferson desired Madison to succeed him. Randolph's opposition took shape in the candidacy of Monroe. This was a diplomatic stroke, as the President could not well support one above the other. Both were not only personal friends of the President but were recipients of political favors, which they fully reciprocated. It was desired that the preference be determined by their own State. Consequently a caucus of the Republican members of the Virginia assembly was held in June, 1808, at Richmond, which resulted in 134 votes for Madison and about sixty for Monroe. This was followed by two caucuses, each of which placed an electoral ticket in the field.

Monroe's attitude. Monroe's treatment by the Administration caused some bitterness. He felt that he had not been supported in his diplomatic efforts in relation to Western Florida, when he was doing his best to pursue the instructions of his chief. He also felt that the President was attempting to shelve him by offering him the governorship of Louisiana, a position that was arduous, and not at all desirable. He also felt that Jefferson had purposely kept from him the fact of the resignation of Nicholas from Congress, a vacancy which could have been filled by Monroe with honor and profit both to the State and to himself. The situation would have induced a less honorable man to have entered into a coalition with the Federalists. There was fear expressed that Monroe might take the step. Monroe was embarrassed not a little by the active support of Randolph who was not in good standing with the Administration. His reticence toward the proposals

of that eccentric Virginian, induced Randolph to criticize Monroe, and later to charge him with ingratitude. Monroe remained quiet in the campaign, and aspired to conduct himself wholly satisfactorily to the unprejudiced mind. After the election he was offered and accepted the Secretaryship of State.

Protest against the caucus. The "Congressional Caucus" was at this time seriously opposed by numerous public men from all parts of the country. After the nomination of Madison by the last caucus, a vigorous protest was signed and sent by a group of congressmen. The protest did not confine itself to the attack upon the method of nomination as unconstitutional and unrepresentative, but it openly attacked the nominee, Madison, as having made a "shameful bargain with the unprincipled speculators of the Yazoo companies," and as having shown "want of energy," and as having participated in the authorship of the "Federalist," with Jay and Hamilton.



JAMES MADISON

Effect of war spirit. By 1812 this agitation had lost some of its vigor. The threat of war with England absorbed the attention of the nation. Madison was a man of peace. His aversion to belligerent policies was embarrassing his closest friends. It was understood then as it is to-day, that the mar-

tial spirit of a people is the most active of all and no party or leader is able to overcome it when once the people are convinced that a wrong is being perpetrated by a bully. A committee waited upon Mr. Madison, and frankly informed him of their conviction that "he could not be kicked into a war," that he would have to be relieved, and unless he took a belligerent attitude they would be compelled to accept another candidate, hence the confidential message to Congress and the declaration of war, June, 1812. The caucus was held in May. The attendance was light. Madison was unanimously nominated. As in 1808, the caucus before adjournment, resolved,

> That in making the foregoing recommendation, the members of this meeting have acted only in their individual characters as citizens; and that they have been induced to adopt the measure from a deep conviction of the importance of union to the Republicans throughout all parts of the United States of our public affairs.

This resolution was designed to lessen the influence of the refractory members who refused to be bound by the doings of the hated "King Caucus." This caucus took an important step in appointing a committee of correspondence, which was the first congressional campaign committee of our history. It was made up of one member from each State, except Connecticut and Delaware. This step shows the beginnings of the party machinery which was soon to play such an important part in elections.

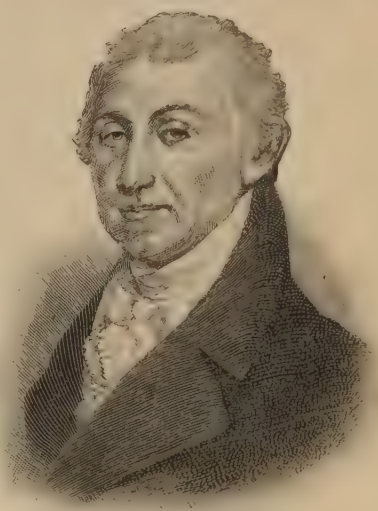
The New York convention of 1812. The procedure of the remnant of Federalists in the campaign of 1812 is of interest. It will be remembered that the candidates of the party in the last quadrennial election were chosen by correspondence, rather than by caucus. Leaders, such as Gore, Cabot, King, Jay, Otis, Pinckney, Griswold, Sedgwick, Stoddard, Gouverneur Morris, and Judge Washington, decided to call a convention at New York. Eleven States were represented by seventy delegates. This convention has been regarded as the first

delegate convention held by any party in the country. However it did not partake of the features of a delegate convention. There was no regular call, no apportionment of members from the various States, no credentials required to sit in the convention, and nothing done except the ratification of a nominee and the appointment of a committee of five to correspond and secure a union of all anti-Madison people to support the candidacy of Clinton.

Interesting deductions. At least two points of interest were involved in the Federalist nomination of 1812, they were: adoption of a method of nomination approaching the delegate convention, and the taking up by the party of a minority candidate for standard-bearer. It will be remembered that Clinton was at the head of a New York faction which was not in favor of the caucus nominee. In fact he was a receptive candidate himself. His opposition appealed to the Federalists who decided to attempt to unify all opposing elements by indorsing him as their candidate. However, this decision was not unanimous among the Federalists. C. C. Pinckney favored King or Jay. Stoddard recommended John Marshall. King felt it to be a mistake to go outside of the party's ranks to secure a candidate. But New England favored Clinton, who was the idol of New York Republicans. He was nominated for the presidency by a Republican caucus in his own State, having received ninety-one of the ninety-three votes cast in the caucus. It was his popularity in his own State, and his well known dissatisfaction with the candidate of his party, that led the Federalists in their convention in New York, the following September, to nominate Clinton for President, and Jared Ingersoll, of Pennsylvania, for Vice-President. The Federalist policy was not one of principle, but of expediency. They succeeded in carrying all the New England States except Vermont, also New York, New Jersey and Delaware. Clinton received eighty-nine electoral votes for President. Madison received 128, while Gerry received 131 for Vice-

President. This policy of flirting with the opposing party leaders was fatal to both the party engaged in it and to the candidate permitting it.

The Republican situation in 1816. Ever since Monroe had allowed himself to be used by Randolph in opposition to the nomination of Madison, the Administration influence was not in his favor. Clinton had placed himself at the head of an opposing faction and had thus reduced his influence to the minimum. Calhoun had not yet shown himself the leader he later proved to be. Jackson was still the warrior of ungovernable passions and not yet thought of in connection with the presidency. The field was in the possession of Monroe, and it was generally believed that he would succeed Madison. At least he was the candidate of the people. On the 12th of March, 1816, fifty-eight Republican members of Congress met to consider the propriety of nominating candidates for President and Vice-President. They resolved to call a caucus and urged a large attendance. The caucus was held on the 16th of the month. In Congress at the time there were one hundred and forty-one members of the Republican party. All but twenty-two were in attendance. The large attendance, in the face of the well defined opposition to the caucus system, was due to a rumor that the popular choice for the candidate might be defeated by the intrigues of



James Monroe

certain leaders. The balloting showed some ground for the suspicion. Monroe received sixty-five votes and William H. Crawford of Georgia received fifty-four. The popular candidate was nominated by the narrow margin of eleven votes.

Effect of the attempt to nominate Crawford. It was at once asserted that there existed a sort of political dynasty at the seat of government, which was attempting to perpetuate itself. The public was reminded that their choice was threatened with defeat by the machinations of certain leaders else a comparatively unknown man could not come so near to winning the greatest office in the nation, over the most available man in it. This was the opportune occasion for the opponent of "King Caucus." Public meetings were held in many parts of the country to protest against it. Roger B. Taney, afterward chief justice, took strong ground against it, claiming it was designed to interfere with the independence of the co-ordinate departments. The President by such method was likely to become obligated to members of the legislature, a contingency which would materially interfere with the necessary independence of an effective Executive. It was this line of argument that later compelled the discontinuance of the policy. In 1820 there was no caucus, although a call was issued. Only a few members attended. No candidate was named.

Crawford, the caucus candidate in 1824. In 1824 party lines had disappeared. Monroe had received all the votes save one in the preceding election. There were plenty of candidates, however, by the time of the next election. Niles declares there were nearly a score of them soon after the inauguration of Monroe the second time. How to determine who should be the candidate was a problem. The caucus was in ill repute, yet no other satisfactory method had appeared to take its place. The President favored Crawford, but not openly. In fact he was the choice of the State leaders. For example, he was favored by Jefferson to begin with. The

Crawford element, which was dominant in Washington, decided upon the caucus plan. It was called accordingly. Out of two hundred and sixty-one congressmen, all told, two hundred and sixteen were Republicans. Of these only sixty-six attended the caucus. Sixty-two of these voted for Crawford, who thus became the caucus candidate of the people.

Clay's candidacy. In 1822 followers of Clay in the Kentucky legislature after its adjournment reassembled and nominated him for President. This action was confirmed in Ohio in the following year when ninety of the one hundred and two members of the legislature met in caucus. On a vote to decide whether to nominate a candidate for President, it stood forty-seven in favor and forty-three against. Whereupon thirty-three members withdrew, and the remainder cast the following vote: Clay, 50; Clinton, 5; Adams, 1; and Calhoun, 1.

Ohio's endorsement of Clay was in keeping with the action of the legislatures of Missouri and Louisiana. The former State was given to Clay through his friend, Thomas H. Benton, who was soon to play an entirely different rôle, when he assumed the leadership against his erstwhile friend from Kentucky. Louisiana gravitated naturally to the support of Clay, because of his zealous part in the establishment of the "American system" of protection to manufactures which was being linked to his name. The sugar interests of the State were dictating the attitude of the State on political matters; hence its advocacy of the election of Clay.

Clay's personality. Aside from the actions of the several legislatures, numerous mass meetings were held in various sections of many States, as Ohio, Pennsylvania, and New York, in the interest of "Harry of the West." This brilliant political figure was born in Virginia, became the "Mill Boy of the Slashes," studied law while acting as amanuensis for the distinguished George Wythe, under whom both Jefferson and Marshall had pursued their legal studies. Wythe was an

alumnus of William and Mary College. He became professor of jurisprudence in it, then chancellor of his State. He was identified with most of the momentous measures of his State, leading to, and growing out of, the Revolutionary War. In the office of this great man, Clay received his earliest impulses for a public career. Late in life he delighted his friends by telling them of his early impressions; how perfectly satisfied he would be if he ever could reach the position of a county court advocate. His ambitions carried him into the West in search of a more fertile field for his talent.

Public recognition. He was soon chosen to the Kentucky legislature, and in 1806, before he had reached the legal age, he was chosen to represent his State in the national Senate. The fact of his reaching the legal age required by the Constitution for a member of the Senate before he was to take his seat, permitted him to serve the unexpired term which he was selected to fill. Later he was selected as the Speaker of the Kentucky assembly, and again served his State in the United States Senate from 1809 to 1811, when he was elected to the national House of Representatives. His universally recognized abilities as a parliamentarian won for him at once the Speakership of the House, in which capacity he was destined to achieve a most brilliant career. He resigned in 1814, but returned again the next year, was elected Speaker and continued to preside over that body until 1821. He was again Speaker in 1823–1825.

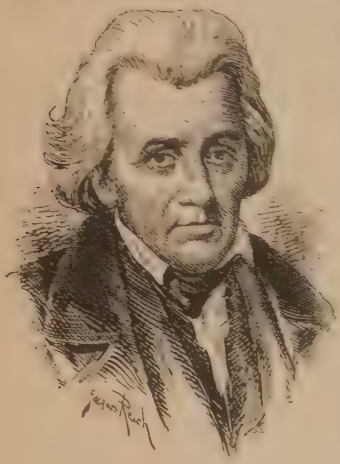
Political affiliations. During this period of preferment he was identified with the followers of Jefferson, and was known as a Jeffersonian Republican. However, his positive views upon many of the vital issues of the day were at variance with the Republicans. He was an ardent supporter of the policy of internal improvements at national expense. He at first opposed the rechartering of the National Bank, but soon changed front upon that question and became a stanch supporter of the plan. He took strong ground in favor of a pro-

tective tariff and later was regarded as its mightiest advocate. His character led him to espouse the cause of the weak and oppressed; hence his almost fanatic enthusiasm, which has been inelegantly denominated by his enemies as ravings upon the question of Greek independence. His "jingoism" on the South American situation was aroused by the conduct of the Holy Alliance. This same characteristic led him to attempt to ameliorate the condition of the American slave. Colonization was his favorite scheme, to which he gave his most ardent support. It was conceded that this new star was to glow with especial brilliancy in the political heavens.

Early glimpse of Jackson. Another figure had appeared in the political arena where it remained for several years gaining influence every year. This new factor was born in the State just south of that which gave birth to Clay, and like him he had moved westward and located in Tennessee. How unlike the Kentuckian was this Tennesseean! The former was a man of thought; the latter, a man of action. The former was at home in the forum; the latter, upon the field. The former persuaded; the latter commanded. Both were subject to strong impulses. Opposition to the Kentuckian would be the signal for torrents of eloquence and shafts of sarcasm. Opposition to the Tennesseean was the occasion for fits of towering rage and summary proceedings. They were both men of the people, destined to become popular leaders. The youth of Jackson appeals to the mass of Americans, especially those of his day. His youthful heroism which resulted in his becoming a prisoner of war in the Revolution, was but an illustration of his nature, duplicated many times afterward in his wild and heroic career. The victory notable at New Orleans made him a national figure. The enthusiasm it aroused in his behalf was occasion of concern to many leading men, chief of whom was Jefferson, who said, "I feel very much alarmed at the prospect of seeing General Jackson President. He is one of the most unfit men I know of for the

place. He has had very little respect for laws or constitutions, but is in fact an able military chief. His passions are terrible." When Monroe had thought of nominating him minister to Russia in 1818, he consulted Jefferson, who exclaimed, "He would breed you a quarrel before he had been there a month."

Jackson as a warrior. His campaign against the Seminole Indians in Florida and his summary proceedings in the execution of Arbuthnot and Ambrister had a double effect. It was declared by his enemies as a high-handed proceeding, and was investigated by Congress when Calhoun was Secretary of War. While Calhoun did not actually condemn Jackson's conduct, still, the fact that the investigation permitted open attacks and strenuous efforts at censure to be brought upon him, induced Jackson, when he learned of his position, ever afterward, to hold the South Carolinian at arm's length. Jackson's desire personally to account for his official conduct, brought him to the seat of government. From Washington he went to Philadelphia and then proceeded to New York. Balls and banquets were given in his honor. His trip was like that of a monarch returning from a conquest. While upon this tour the Senate made some reflections upon his conduct. On account of the numerous attacks public gaze was fixed upon him. In this way his talents and services became known and the persecution awakened sympathy for him.



ANDREW JACKSON

As a political figure. On the fourth of July, 1822, the governor of Tennessee presented to him in the name of the State

a sword, as a testimonial for services rendered the State. In the following month the State legislature presented him to the Union as a suitable candidate for the presidency.

The legislature of Alabama did likewise. Numerous assemblages of private citizens in various parts of the country recommended him. On the anniversary of Washington's birth, 1824, a Federalist convention was held in the city of Harrisburg, Pennsylvania, and nominated Jackson for President. On the fourth of the following month a Democratic convention was held, which also nominated him for the presidency. In the following August the "regular" Democratic convention was convened at Harrisburg and endorsed Crawford. It will thus appear that Jackson's candidacy was launched largely by the people of the States.

The younger Adams. The first thirty-six years of the nation's life saw but five Presidents. Four of them came from Virginia, who, in the aggregate, administered thirty-two years. For the remaining four years of the thirty-six years, the elder Adams was at the head of the government. During this time a high rank of statesmanship was maintained in the choice of Executive. The traditions of the office in 1824 pointed to John Quincy Adams as the successor to Monroe. The custom had prevailed of selecting the Secretary of State to succeed his chief in office. It was claimed that Monroe had chosen Adams for his Secretary, rather than either Calhoun, Crawford or Clay, on the ground that Adams would be least likely to be a candidate for the presidency; in this way he (Monroe) would not be aiding the candidacy of any of the aspirants. Adams was the best equipped of the candidates with the possible exception of Calhoun. As a youth he was precocious. He studied abroad and at the age of fourteen became private secretary to Francis Dana, our minister to Russia. He was graduated at Harvard and admitted to the Bar. He became minister to Holland, Prussia, Russia, and England, also a United States senator, special commissioner to negotiate the

Treaty of Ghent, and Secretary of State under Monroe from 1817 to 1825. His approval of Jefferson's embargo against the sentiment of his section of the country, identified him with the Republicans with whom he had fraternized up to his election in 1824.

His fitness for the presidency. His political standard was high and his sense of public duty keen. He absolutely refused to do the necessary thing to gain popularity, to make political friends when it meant to him a surrender of dignity. He was austere in the extreme. He was an able candidate but not an available one. He had received one vote for President in 1820 the preceding election. In 1823 he was nominated by a joint meeting of the Republican members of the Massachusetts legislature and of Republican delegates from towns in the State not represented in the legislature. In 1824 a mass meeting in Virginia nominated him for President and Jackson for Vice-President. It thus appears that he was presented to the people in a similar manner to that in which Clay was brought forward.

JOHN QUINCY ADAMS

Calhoun in South Carolina. Yet another important figure loomed up in the distance to stimulate speculation over the outcome of the campaign. In South Carolina two promising statesmen were attracting attention. One was John C. Calhoun, who had entered Congress in 1811, and at once became the leader of the younger element of the Republican party. He was fortunate in finding himself on the right side of the

war agitation and in fact of most questions of vital importance. He became Monroe's Secretary of War, and has the rank even to-day of one of the greatest War Secretaries the country has known in time of peace.

His home rival was William J. Lowndes, who had preceded him in the House one year. He remained in active service to his death in 1822. Clay referred to him as "the wisest man he had ever known in the House." Governor Hamilton believed that three-fourths of the State was for Lowndes. In 1821 the legislature endorsed him in preference to Calhoun. Lowndes, however, believed that Calhoun was the stronger outside of the State, and refused to make any effort to secure the office. His untimely death in 1822 cleared the field for Calhoun.

Outside of South Carolina. In this same year there was a movement set on foot by several Congressmen in behalf of Calhoun's candidacy. In the following year the legislature of South Carolina endorsed him as their candidate for President. Calhoun wrote that the caucus of the members of the legislature was unanimous except four or five. It was clear that the young men of the country were for him. King believed that the army was solid for Calhoun. John Q. Adams recognized his popularity in New England, and as early as 1818, before there was any occasion for rivalry, he declared that Calhoun "was above all sectional and factious prejudices more than any other statesman of this Union with whom I have ever acted." Webster asserted that he was the best candidate among those mentioned for the office. Judge Story wrote, "I have great admiration for Mr. Calhoun, and think few men have more enlarged and liberal views of the true policy of the national government." He was but forty-two. Niles wrote in the Register, "He is the only candidate in whose favor the *people* have moved." Calhoun's hopes, whatever they may have been, were dissipated by the action of the people of Pennsylvania. Aside from South Carolina his

strongest State was the Keystone State. That State was conceded to him, until it was stampeded for Jackson, and the erstwhile favorite was made the choice for Vice-President. The Adams and Jackson elements united on him for Vice-President, and he received all the electoral votes but seventy-nine.

The vote in 1824. Of the two hundred and sixty-one electoral votes cast, Jackson received ninety-nine votes, a plurality of fifteen, which fell short of a majority by thirty-two. Adams received eighty-four; Crawford, forty-one; and Clay, thirty-seven. This failure to elect a President threw the election into the House of Representatives. In the House the vote stood: Adams, eight-seven; Jackson, seventy-one; and Crawford, fifty-four. Clay, having fallen lowest in the electoral count, by force of the Constitution, was shut out of the contest in the House. It was conceded that had he been within the constitutional requirement and allowed to compete in the House, he would have been elected. In the House contest the Federalist influence as well as the Clay influence went for Adams, thus electing the National Republican candidate.

Political effect of the election of 1824. This defeat was laid at the door of "King Caucus." It was argued that had the caucus element, which claimed to be the regular Democratic party of the country, supported the Democratic candidate, either in the election at large, or in the election in the House, the people's choice would not have been defeated. Many had been for some time waging an uncompromising fight against the caucus. They denounced it as undemocratic, a usurpation of authority, and an attempt to arrogate to a few self-appointed leaders power that belonged to the people. Several Southern States pronounced against the system: namely, Tennessee, South Carolina, Alabama, and Maryland. Pennsylvania took the opposite position. It was no longer a matter of doubt that the caucus was the instrument in the hands of the machine politician, and being thus identified it soon fell

under the ban of public opinion. Crawford was the last caucus candidate, and the "Scrub Race," so called because the campaign was in the interest of candidates rather than parties, was the last campaign in which the method was employed. It came into use in an emergency and went out by the decree of the people.

Second method — legislative resolution. It has been observed that methods other than the congressional caucus has been employed to name presidential candidates. One of these was the legislative resolution. In 1807, during the embargo agitation, the legislatures of several States endorsed Jefferson, which fact was regarded as an attempt to present him as a candidate for a third term. In the same year the legislature of Kentucky recommended the candidacy of James Madison. In 1824 the legislature of Alabama recommended Jackson for President and attempted to unify action of the several States by ordering the resolution sent to the various States with a request to join in the support. In 1835, White was recommended by the legislature of the same State. In 1842 Calhoun was nominated by the legislatures of South Carolina and Georgia.

Third method. The legislative caucus was employed frequently. The first case on record was that of the nomination of Clinton in New York in 1812. The case of Kentucky presenting Clay in 1822 and Ohio endorsing him in 1823 are examples of this method. From 1824 to 1832 the method was quite common.

Fourth method. The legislative mixed caucus or convention was employed to remedy the faults of the legislative caucus. This method was open to the same objections that were urged against the congressional caucus; namely, that it was unrepresentative. In a caucus of the members of the legislature of any one political party, many counties of the State would be without a representative. Every county represented by the opposite party would be without a voice in the nomination of

the caucus candidate. To remedy this defect, the mixed convention was substituted for the caucus. Its plan was to hold a meeting or convention composed of the members of the legislature belonging to the caucusing party and delegates from the counties represented by members of the opposite party. This plan was employed frequently in State nominations. It was employed in 1823 in New England in naming John Quincy Adams for President, and again in 1843, in Richmond, in nominating Clay for the same office.

Fifth method. The State convention was another method employed to nominate candidates for President. The Harrisburg convention that presented Jackson in 1824 was of this type. Mass meetings to launch the candidacy of a favorite son came into use about 1824. Adams was presented in Virginia by such a gathering. Clay was presented in Ohio and other States in this manner. Jackson followers employed this method in many States. The disfavor into which the caucus had fallen, and the want of unanimity in the various other methods employed, gave rise to the delegate convention system, which has continued down to the present time. The success of this method warrants a more extensive examination.

CHAPTER VIII

THE DELEGATE CONVENTION ESTABLISHED—1832-1844

Appearance of Anti-Masonry. In 1826 one William Morgan, a Freemason in western New York, threatened to reveal the secrets of the Masonic order. He was arrested on a charge of debt, taken in custody, and disappeared. That he was murdered was charged against the order. The first indication of public disapproval was the defeat of a local politician by a large vote, and so quietly was his defeat accomplished that it was not known up to the election that the officer in question had any opposition. The disaffection spread like a forest fire. It enlisted the efforts of young voters and won support from many churches, as well as from the citizens of rural districts, until the cause commanded sufficient strength in the State to elect several members to the legislature.

The spread of the agitation. From New York the agitation spread through Pennsylvania, Ohio and New England. It received the support of the famous editor Thurlow Weed, and such statesmen as Seward, J. Q. Adams, Calhoun, Everett, Rush, Harrison, Webster and Sumner; such jurists as Marshall and Story, and such divines as Lyman Beecher, who, on an occasion in Boston, prayed that the "great and good cause in which we are engaged may find acceptance above." This incident, which at first merely concerned a rural community, had in a brief time disturbed the political equilibrium of the Empire State, and assumed a national significance. Numerous mass meetings were held to arouse sentiment. At a meet-

ing on the anniversary of Morgan's abduction, held in Boston, William H. Seward was the speaker. On the approach of the time for the presidential election in 1832, the Anti-Masons were first in the field.

First delegate convention. The adherents of the new party called a convention to be held at Philadelphia in September, 1830. They styled the gathering, "The United States Anti-Masonic Convention." In it there were ninety-six delegates, representing the States of Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Ohio, and the territory of Michigan. The convention elected Francis Granger, of New York, as chairman. It adopted a resolution arranging for a second convention to be held in the city of Baltimore on the 26th of September, 1831. It recommended that each State be allowed a number of delegates equal to the number of electoral votes to which it is entitled in the electoral college. It did not specify the manner of choosing these delegates. It stated the purpose of the coming convention to be the choice "of suitable candidates for the offices of President and Vice-President, to be voted for at the next election, and for the transaction of such other business as the cause of Anti-Masonry may require." This Philadelphia convention has been erroneously styled the first national delegate convention, called to nominate a candidate for President. It did nothing except organize, by selecting a chairman, and provide for the assembling of a national delegate convention to select a candidate for President. It then adjourned.

Convention in session. Accordingly, on the appointed time, the first delegate convention met in session at Baltimore, with one hundred and twelve delegates present, representing thirteen States, including all of the New England States, New York, Pennsylvania, Ohio, Indiana, New Jersey, Delaware, and Maryland. This representation indicates that the party's source of strength was opposition to Jackson, rather than

zealous advocacy of any distinct principle. The union of all anti-Jackson elements was the dominating idea of the convention. The policy of the martial President tended to solidify the opposition. The sweeping defeat of Adams and the vicious attacks against Clay by the Administration adherents, together with the brillant talents of leadership displayed by Clay, caused the opposition to rally around the Kentuckian as the standard-bearer in the coming struggle.

Candidates mentioned. Wirt, who had been attorney-general for the past twelve years and who had become exasperated over the baseless charges against Adams and his administration by the Jackson followers, favored Clay as the rival candidate of Jackson. On this matter he was in correspondence with Salmon P. Chase of Ohio and other prominent men. There is little doubt that had Clay renounced the Masonic order, which he declined to do, he would have been nominated by the Anti-Masons. His defection compelled the search for another leader. John McLean, of Ohio, was decided upon as the available candidate. But this decision had to be modified on account of the declination of Judge McLean who was too broad-minded not to see that a party built upon such a slender foundation as the Morgan incident and a campaign conducted upon a single positive idea which was negative in effect, and the choice of a candidate on the ground of opposition to a present régime, rather than any peculiar positive qualities he might possess, must end in humiliating defeat. John Quincy Adams was available so far as his attitude toward the anti-Masonic agitation was concerned, for his denunciation of Freemasonry had reached the public press. But his complete rout in the preceding election disqualified him.

Wirt nominated. During the session of the convention Chief Justice Marshall and Ex-Attorney-general William Wirt were invited to take seats upon the platform as a mark of courtesy toward distinguished talent and public service. Very much to the surprise of Wirt he found that the thoughts

of the delegates were directed toward him. The convention tendered him the nomination on the 28th of September, and in the evening of the same day he sent a communication accepting the nomination. It is an interesting communication. He accounted for his inactivity in politics on the ground of his love of peace and expressed his surprise that he should receive any recognition from the Anti-Masons. He was amazed that a party could be built upon such an incident as the Morgan episode. His acceptance closed with the following: "If, with these views of my opinions, it is the pleasure of your convention to change the nomination, I can assure you very sincerely that I shall retire from it with far more pleasure than I should accept it. If, on the contrary, it be their choice to abide by it, I have only to add that, in a government like ours, I consider no citizen at liberty to reject such a nomination by so respectable a body, upon personal considerations." His position was satisfactory to the delegates and he entered the campaign. Amos Ellmaker, of Pennsylvania, was nominated for Vice-President. The practise of adopting a party platform had not come into vogue yet, but a very near approach to it was made by this convention when it appointed a committee to issue an address to the people. It dwelt upon the condition of the times, the ill effects of secret societies, pointed out the qualities of their candidate, Mr. Wirt, and closed by calling upon all good citizens to rally to the support of the cause.

Wirt as a presidential candidate. Wirt was satisfactory to the Anti-Masons and his political career had been consistent with the wishes of the opposition to Jackson. On the other hand Wirt was convinced that without the Clay endorsement, his candidacy would be a farce. On the 5th of December, just one week before the Clay convention met, Wirt wrote Judge Carr, "There seems to be no doubt of Mr. Clay's nomination by the convention here next Wednesday. So be it. In a personal point of view I shall feel I have made a lucky escape. I told the Anti-Masons that they had rung the knell of my

departed peace." In another letter to Judge Carr he said: "A clergyman informs me that the Presbyterians are thinking of coming to my aid. I belong to their church. They are said to number one hundred and twenty thousand votes. My advice to them is to stick to their religion, and not sully it by mixing in political strife. They will make more hypocrites than Christians by such a course. This is bad advice as a politician, but sound as a Christian." No surprise should be awakened that a man such as Wirt would exert every honorable means to withdraw from the turmoil of a campaign fraught with so much anxiety. Only his keen sense of duty to the men who placed him before the people, kept him in the race to the end.

State of parties in 1828-1832. The Jackson enthusiasm assumed various forms. In city and State his followers at once groomed him for the track in the coming race. Among the various nominations he received was one in Columbus, Ohio. His followers in Congress made it a point to embarrass every measure of the Adams administration. By 1828 the country knew the campaign would be made for only two candidates: Jackson and Adams. The defeat of Adams in this election opened the way for Clay in the election of 1832. This was not only because of Clay's qualifications, but especially because he had been the target for bitter attacks from Jackson and his friends. He was charged with being guilty of a corrupt bargain in which it was alleged that he sold his influence to Adams for the position in the Cabinet so that he might be in the line for succession to the presidency. Notwithstanding the specific denial of the charge by both Clay and Adams, and the public exculpation from no less an opponent than Benton of Missouri, the charge was reiterated by Jackson and his friends. Jackson's attitude toward his opponents, his dealing with the office-holders, his war upon the Bank, and his extension of the Executive function in general, created an opposition which naturally rallied around Clay as the suitable candidate to be pitted against him.

A Clay convention. For the sake of union of sentiment, a convention of those in opposition to Jackson and his policy was decided upon. It was arranged to have the convention meet in Baltimore on the 12th of December, 1831. It was this convention that Wirt had agreed to attend in behalf of Clay. There were one hundred and fifty-seven delegates in attendance, representing seventeen States and the District of Columbia. Clay was unanimously nominated for President and John Sergeant, of Pennsylvania, for Vice-President. The convention adopted no platform of principles but, like its predecessor, the Anti-Masonic convention, it issued an address to the American people calling their attention to the tendencies of the Jackson régime.

An address to the people. The address declared that for the last three years party measures were dictated by blind cupidity or vindictive party spirit, marked throughout by a disregard of good policy, justice and generous sentiment, terminating in the dissolution of the Cabinet under discreditable circumstances. It criticized Jackson for his allusions to the corruption and incapacity of Adams. It denounced the "spoils system" of the President, and declared that political proscription was carried so far that within one month he had removed more public officials than had been removed during the forty years of the existence of the government. He was charged with inconsistency and unreliability on questions of national significance, such as the tariff and internal improvements. He was denounced for his war on the United States Bank. In fact the address was a series of negatives, an example of that error which denounces a condition, but offers no measure of relief. A negative as an issue of itself uniformly fails in the end. The address ended by recommending to the young men of the National Republican party that they hold a convention in the capital city in the following May.

The first national Whig convention. In compliance with the recommendation a convention of young men met in Wash-

ington on the 11th day of May, 1832. It elected William C. Johnson chairman, endorsed the candidates of the previous convention, adopted a platform of principles and adjourned. This was the first instance in our history that a political platform was formally presented and adopted. It consisted of a series of ten resolutions. The first declared that only the united efforts of the citizens can perpetuate the principles established by our fathers. The second pronounced in favor of a "protective tariff." The third declared in favor of an internal improvement policy. The fourth indirectly criticized the President by declaring that the Supreme Court was the final arbiter in disputes where the nation was involved. The next four resolutions were counts in the indictment of the President. The tenth and last resolution of the platform was a call to every citizen, "who regards the honor, the prosperity and the preservation of our Union, to oppose by every honorable measure the re-election of Andrew Jackson, and to promote the election of Henry Clay of Kentucky, and John Sergeant of Pennsylvania, as President and Vice-President of the United States." Thus the National Republican candidate, who henceforth became the leader of the Whig party, entered upon his campaign after a double nomination. He went before the people to contest his claims with one of the most consummate leaders this country has known.

Dissension among the Democrats. The militant Jackson had a stormy administration. If a Cabinet member was derelict in his fealty to him he was asked to resign. In case he declined to withdraw, Jackson removed him and appointed a successor. If a Cabinet member's wife was not acceptable socially to the other members' wives, the President issued his orders against discrimination. If the Supreme Court of the nation gave a decision adverse to the opinion of the Chief Executive, he felt it his privilege to ignore it. He both governed and reigned. He was the Executive in the largest sense of the word. In public life he was scrupulously honest. No

bribe taker or giver would dare approach him. His qualities were such as appealed with powerful effect to the average voter. He possessed the qualities of a popular leader. At the close of his first term, although he had declared himself opposed to a second term, there was no thought of any other candidate. Not so in the case of the Vice-President. Calhoun was serving his second term, and it was against the traditions of the office for him to serve longer.

Jackson and Calhoun. It was no secret that Calhoun was not pleased with the conduct of the President. Nor was the President satisfied with the attitude of the Vice-President. He was convinced that the latter desired him out of the way, that preferment might come to him which was most surely not to come with Jackson in authority. The episode at the Jefferson dinner was another incident illustrative of the factional feeling growing up between the two men. The threatening attitude of the State of South Carolina was laid at the feet of Calhoun. The conduct of the Calhouns toward Mrs. Eaton was a determining factor. Van Buren in 1824 became the champion of "Old Hickory," and in turn made himself heir to the political inheritance of the military chieftain. Jackson desired Calhoun displaced and his New York favorite installed.

First Democratic national convention. Owing to this lack of unanimity of the Jackson followers to agree on the running mate, they decided to call a convention to determine the questions. The convention was called to meet in May, in the city of Baltimore, which was the third convention held in that city in the years, 1831–32. Lewis, Jackson's manager, said the suggestion for this convention came from New Hampshire Democrats who used the name "Democrat" for the first time in connection with the Jackson party. The convention was a representative one, having a representation from every State in the Union except Missouri. General Robert Lucas of Ohio was chosen as presiding officer. The convention fixed

the representation of the States in the convention, basing it upon the electoral vote to which each State was entitled. It also adopted the rule, that "two-thirds of the whole number of votes in the convention shall be necessary to constitute a choice." This rule, which has created considerable discussion in Democratic councils, was adopted in the very first national convention held by that party. Van Buren received two hundred and eight votes; R. M. Johnson, twenty-six; and Philip P. Barbour, forty-nine.

Nomination and election of the Democratic candidates. Thus the convention ratified the choice of the President. No platform was drafted, but Mr. Archer of Virginia was authorized to prepare an address to the people. He reported the wishes of the committee not to prepare a general address, but that explanations be made to their various constituencies throughout the land. To avoid the charge of dictation hurled at the old-time caucus, it has no binding force.

The election resulted as follows: Jackson, 219 votes; Clay, forty-nine; Floyd, eleven, and Wirt, seven. The Anti-Masons succeeded in carrying one State, Vermont. After this election the Anti-Masonic party ceased to exist. It gave to the country the national delegate convention, which was adopted at once by both the Jackson men, who henceforth took the name Democrat, and the National Republicans, who henceforth were known as Whigs. This system of nominations has been continued with little variations from that day.

Opposition to the Jackson dynasty. The defeat of Clay and the re-election of Jackson was not unexpected by the leaders of either party. No political leader could avail against the dynasty which Jackson had established in spite of the numerous factions developing within the party. The most serious difference in the party arose from the efforts of the President to name Vice-President Van Buren as his successor to the chief magistracy of the nation. It was asserted by the bolder dissentients in the party that they had reluctantly assented to

the President's wishes relative to his running mate in the previous election because the attitude of his former running mate had embarrassed him in the performance of his official duties. Now they declared that no such emergency existed and it was undemocratic to permit an outgoing Executive to say who his successor should be. Jackson was a man of strong likes and dislikes. These characteristics were ruling passions in him. His intense hatred of Calhoun led him to espouse the cause of a man out of favor with the South Carolinian.

Jackson and Van Buren. Van Buren's loyalty to his chief while Secretary of State, during which time he stood by Jackson throughout all the fierce storm of abuse and vindicated him on all occasions — even to defending his attitude in the Mrs. Eaton episode — had won the gratitude of the great chieftain. The fact that Jackson was serving his last term emboldened many to oppose Van Buren's nomination. The defection of the Calhoun wing of the Democracy was not the only break in the ranks, but a widely respectable element of the party endeavored to thwart the Van Buren movement by taking up Senator White, of the President's own State, formerly a warm supporter of Jackson. The grizzled old hero attempted to defeat the purpose of the malcontents. It was in this campaign that the picturesque Davy Crockett figured. Crockett was caustic in his references to his old rival's making friends with the New Yorker, as against his dignified fellow citizen, whose valiant support in former days had been so freely received. The opposition was so well defined that it threatened defeat for the party. It became so wide-spread that unity of action was impossible, unless sentiment could be crystallized about some one leader. A consultation of the Jackson leaders revealed the fact that the opposition was not united on any one candidate, while Van Buren was the unanimous choice of the friends of the President.

Democratic national convention. It was decided to call a national convention of the Democratic party to nominate a can-

didate and thwart further dissension. Accordingly, a convention was called to meet in Baltimore in May, 1835, the second national convention of the Democratic party. There were over five hundred delegates present. Every State, except South Carolina, Alabama, and Illinois, was represented. The convention in its composition was a sort of mass meeting. One hundred and eighty-three delegates attended from Maryland, and one hundred and two from Virginia. Tennessee, the home of Jackson, had but one, and New York, the home of Van Buren, forty-two, the number of its electoral votes at the time. The machinery of the convention had not yet been built, but a very important step was taken when the convention adopted the rule of apportionment. This rule gave to each State the number of votes to which it was entitled in the electoral college. In other words the one hundred and eighty-three delegates from Maryland cast but ten votes, while the single delegate from Tennessee cast fifteen. An attempt to abolish the two-thirds rule of the preceding convention failed. Van Buren was unanimously nominated, thus confirming the statement that the convention was but a meeting to ratify the will of the out-going President.

Episode in the convention. The will of the President having been carried out in the matter of choosing the candidate for President, the delegates insisted upon their discretion in the choice of Vice-President. R. M. Johnson of Kentucky was the favorite. But bitter opposition to him developed in the Virginia delegation. W. C. Rives of Virginia was a second candidate. The ballot showed that Johnson had received one hundred and seventy-eight votes, and Rives eighty-seven. The Kentuckian having received two-thirds was declared the nominee. Whereupon the delegates of Virginia announced their refusal to be bound by the result. They declared their purpose to oppose Johnson on the ground that they had come to the convention pledged to support principles, not men. This conduct is significant in revealing the lack of the binding

force of the convention upon the people. It is evident that neither the people nor the delegates looked upon the doings of the convention as binding, but rather as a recommendation to be followed or not, at the discretion of the voter. No platform was adopted, but an address to the people was ordered.

A stormy administration. The distracted opposition to the Jackson régime lacked the element of unity. The only thing upon which it was united was its displeasure with the Administration. The faction led by Calhoun grew out of personal disagreements. That led by Clay was also intensely personal. That led by White of Tennessee was more of a local character. The policy of the spoils system was destined to make one friend and two enemies, consequently the general disaffection of the office-holder who had been displaced was apparent. The war on the Bank had arrayed against the President a very influential element.

Martin Van Buren

His famous message on nullification produced bitter hatred in certain quarters. His foreign policy was warmly denounced. His famous specie circular came in for its share of abuse. But the climax was reached, when he caused the public deposits to be placed in the State banks.

The Triumvirate. This was pronounced a high-handed scheme for over-riding the Constitution. It was the last straw. Then was formed the triumvirate — Calhoun, Clay and

Webster — who sought to censure the Executive for the alleged unconstitutional act. In spite of the most strenuous efforts of the President, the vote of censure was spread upon the minutes of the Senate, but through the untiring energy of Benton the resolution was finally expunged a year after. At this time the slavery question was creating some disturbance under the agitation of Garrison and others. The opposition was so distracted that a leader of uncommon qualifications to unify the scattered elements was demanded. Adams was no longer thought of in this connection. Clay was the most available man, barring the incident of his disastrous defeat in 1832. Webster was the choice of his own State, but his many constitutional disputes with the South Carolinian contingent did not recommend him as a candidate who would win the Calhoun defection. There were some who favored the candidacy of White, but it was doubtful whether he could carry his own State against the influence of the President, so he also was dropped.

State of Whig party in 1836. The martial spirit of the average American is very strong. The case of "Old Hickory," as the friends of Jackson were delighted to call him, is an example. Jackson was thought to be an ignorant man. He had arrayed against him at first much of the talent and respectability of the country, still he came to be one of the most popular leaders the country has known. The Indian War in 1811 and the war of 1812–15 with England brought out a second military hero, William Henry Harrison of Ohio. He had not been identified with public life, and consequently was not concerned with the factional quarrels in the party. In 1835, at Harrisburg, Pennsylvania, a Whig State convention nominated Harrison for President and Granger for Vice-President. A Democratic Anti-Masonic convention in the same city nominated the same ticket. In fact the Granger candidacy was designed to win the Anti-Masonic vote. Judge McLean of Ohio was proposed by the Ohio legislature as a candidate,

Harrison was nominated by conventions in Ohio, Maryland, New York and other States.

Attempt to unify Anti-Jackson elements. White was nominated by the legislatures of Tennessee and Alabama as the Anti-Jackson candidate, and Webster was nominated by a caucus of the Whig members of the Massachusetts legislature and recommended by New England leaders. The Nullifiers of the South favored Mangum of North Carolina. There was no national convention of the Administration opposition elements. There were, however, several candidates representing various sections of the country and various Anti-Jackson forces. The only hope of these elements was the possibility of preventing an election and throwing the contest into the House of Representatives. This hope was dissipated when the campaign was once fairly begun. Of the two distinct parties contesting for supremacy, one was without unity, either in sentiment or in organization. The Democratic party proper presented quite a solid column, while the Whig party, the successor of the National Republicans, had not combined all the opposition composed of the old National Republicans, the Nullifiers, the Constitutionalists (who declared the President had violated the Constitution), the Anti-Masons and all those who opposed the general policy of the militant chieftain.

Election of Van Buren. This will account for the five candidates voted for in the campaign. Van Buren received the votes of the following States: Maine, 10; New Hampshire, 7; Rhode Island, 4; Connecticut, 8; New York, 42; Pennsylvania, 30; Virginia, 23; North Carolina, 15; Louisiana, 5; Mississippi, 4; Illinois, 5; Alabama, 7; Missouri, 4; Arkansas, 3; Michigan, 3. Total, 170.

Harrison received the votes of the following States: Vermont, 7; New Jersey, 8; Delaware, 3; Maryland, 10; Kentucky, 15; Ohio, 21; Indiana, 9. Total, 73.

White received the fifteen votes of Tennessee and eleven of Georgia — twenty-six in all. Webster received the fourteen

votes of his own State, and Mangum eleven of South Carolina.

Failure of election of Vice-President. For Vice-President votes were cast for four candidates: namely, Johnson, the regular Democratic nominee, who received the Van Buren vote, except that of Virginia, thus reducing Johnson's vote to 147, which was below the necessary majority; Granger, the Whig nominee, with Harrison; Tyler, who was the running mate with White, but who was nominated by the Maryland Whig convention as Harrison's running mate; and Smith of Alabama, to whom Virginia's vote went. The circumstance prevented the election of a Vice-President, and threw the election into the Senate in accordance with the provisions of the Federal Constitution. This body proceeded to elect Johnson. This is the only instance in our history that the Senate has been called upon to elect a Vice-President.

Clay's expectations in 1840. Long before the end of Van Buren's administration there appeared symptoms of party disintegration. It was readily observed that while the political heir of the Sage of the Hermitage could inherit the office, he could not inherit the qualities of leadership of his ancestor. The State elections were adverse to his party. No one was more alive to the situation than Clay who expected to receive the Whig nomination in the coming campaign. He knew that he was regarded as the chief of the party, for he had championed every vital issue upon which the party was built. He had never shirked a duty to his party and had always placed himself in the thickest of the fight. His public career for thirty years had kept him before the eye of the nation. At this time Clay was universally recognized as one of the most consummate leaders in the annals of political history. He had voluntarily given way in the last campaign and now felt that he had a free field. In this he was doomed to disappointment. Clay's attitude toward the anti-Masonry movement in his campaign of 1832 insured the opposition of that faction of the Whigs.

His name so closely linked to the American system rendered him unacceptable to the South Carolina wing of his party. Being himself a slave-holder made him somewhat odious to the rapidly rising Abolition party. His apparent indifference to Webster's campaign in 1836 tended to anger New England. These facts widely known throughout the country caused many leaders to fear his chances for success if nominated. Early in 1839 Clay had been informed that New York would support him. He had reasons to believe that Pennsylvania would also stand by him. He was disillusioned in regard to the first State, when, on a tour of New York, he was frankly told by Thurlow Weed that the State would be for Harrison. His hopes in regard to Pennsylvania were blasted by the "Union and Harmony" convention of that State, when it resolved that only Harrison could unite the factions against the Democratice candidate.

Whig convention in 1840. The national Whig convention was held on the 4th of December, 1839, at Harrisburg, Pennsylvania. Twenty-two States were represented by at least two hundred and sixty delegates, a majority of whom were favorable to the nomination of the "Great Pacificator," Shrewd politics was the order of the day. In New York, prior, to the selection of the delegates for the national convention, letters were addressed to pretended Clay supporters, but real opponents, urging strenuous efforts in their sections to secure a Clay delegation, stating that such efforts were imperative if a showing was to be made, as his name was not greeted with enthusiasm. These letters were then widely reported until the Clay campaign was quite lifeless. To add to the discomfiture of the friends of Clay, the convention adopted a rule of procedure designed to encompass his defeat. Each delegation was required to appoint a committee of three to receive the views of the delegation, and then communicate the same to the assembled committees of all the delegation, whereupon each delegation should ballot for a candidate; after which the committees

were to compare notes. If no majority had been cast for any one candidate then another ballot should be taken, and so on until such a majority was reached when it was to be reported to the convention. By means of these sub rosa proceedings the minority party or candidate could direct his supporters to the best advantage.

Clay's strength. The first comparison of the committees of three showed Clay had received 102 votes, Harrison 91, and Scott 57. Ballots were taken in the committees for three days, but as no candidate had received a majority it was only reported to the convention that the committee had not been able to agree upon a candidate. Finally, on the third day, the New York delegates who had been supporting Scott went over to Harrison. They were followed by the Scott delegates from other States, which gave Harrison the nomination by 148 votes to 90 for Clay. The disappointment to Clay was almost overwhelming. He exclaimed, "I am the most unfortunate man in the history of parties; always run by my friends when I am sure to be defeated, and now betrayed for a nomination when I, or any one, would be sure of an election." The convention did not adopt a platform. On the fourth day of the convention John Tyler of Virginia was unanimously chosen Vice-President, a report which was received with a mighty applause.

Clay's defeat a disappointment. Greeley, who had been an interested observer of the proceedings throughout the convention, justified the result. He defended Weed and Governor Seward for their part in the nomination of Harrison on the claims of the delegates of Pennsylvania, Ohio and Indiana, that these States could not be carried for Clay. Greeley further says that upon the defeat of Clay, Tyler, who had been first and last a Clay man, wept, and ascribes his unanimous nomination for the vice-presidency to the party's desire to conciliate the friends of Clay. It is important in the study of the national convention system to note in this National Whig convention the attempt of the delegates to represent

the wishes of their respective States. Virginia's delegates were instructed for Clay and Tallmadge, but in the end were to go with the majority. New Jersey instructed for Clay. In New York, Pennsylvania, Illinois and Missouri the delegates were uninstructed. Up to this period the delegates represented the States and not as to-day the districts of the several States. In this convention the delegates from Arkansas represented the State of Louisiana, as well as their own State.

Appearance of the abolition agitation. In this same year a new force appeared in national politics which was destined in a short time to become of most serious public concern. It was the movement emanating from the presence of slavery in the land. It is not the purpose to examine this institution as it affected the current of history except to indicate its effect upon the system of nominations. The agitation started as a social movement. Strong efforts were made to commit the churches against it. The "Genius of Universal Emancipation" was an organ started in the interest of the abolition of the traffic of human slavery. Its domicile in the slave city of Baltimore proved unsavory to the inhabitants and it was decided to move it to the capital city of the nation. In 1831 William Lloyd Garrison, the foremost anti-slavery agitator, issued the first number of a new publication known as the *Liberator*, printed in Boston. His announcement to the public had the ring of the reformer. He exclaimed, "I will be as harsh as truth and as uncompromising as justice; I will not equivocate; I will not excuse; I will not retreat a single inch; I will be heard." One of his first objects was to petition Congress to abolish slavery in the District of Columbia. In other parts of the country other agitators were busy. The names of Lundy, Birney, Lovejoy, Lucretia Mott, Abby Kelley, and the Grimké sisters, became famous, especially the last three, due to the determination to exclude women from participation in the proceedings of public meetings on the ground of a "wise custom ever observed."

American Anti-Slavery Society. The next year the American Anti-Slavery Society was organized. Great mass meetings were held in Philadelphia and New York. Gerrit Smith favored a line of activity that would affect political issues. Garrison opposed such efforts. He declared the moral and religious forces would be disintegrated; the policy would arouse antagonism with no compensating advantage, and in the mêlée the cause would suffer. The reform forces were already divided over the woman phase of their operations. In 1839 in a convention a line of action was discussed and several questions were considered, namely:

(1) Shall the reformers take an active part in the campaign, or shall they decline to participate in the elections in any way?

(2) Shall the reformers go before the people as a new party?

(3) Shall the women participate, and to what extent?

(4) How shall the funds be raised and collected and applied by the State organizations or by the national organization?

Agitation movement split. The inability to conciliate the leaders so at variance split the forces, and thenceforward operations were carried on from two headquarters: the East and the West. Garrison led the East, and Birney and Smith the West. Garrison sarcastically commented upon the division. In the meantime, the whole West was veritable camps of agitation. Giddings and Wade, of Ohio, brought the matter prominently before the country by their radical utterances. The heroic fight of John Quincy Adams for the right of petition in Congress met with approval in the West, a most fertile soil for the growth of reforms. In this section the agitation naturally spread, and naturally assumed a political phase. This people believed in voting as often as the privilege was extended. In 1839 in the city of Cleveland a convention was held to consider the feasibility of erecting a third political party. Garrison questioned the motives of the leaders.

First Abolition convention. On the 13th of November, 1839, at Warsaw, New York, an Abolition convention was held. It was not a national convention. It resolved,

> That, in our judgment, every consideration of duty and expediency, which ought to control the action of Christian freemen, requires of the Abolitionists of the United States to organize a distinct and independent political party, embracing all the necessary means for nominating candidates for office and sustaining them by public suffrage.

The convention then nominated James G. Birney of Kentucky for President and F. J. Lemoyne of Pennsylvania for Vice-President. Garrison referred to the work of the convention in the next issue of the *Liberator* as "folly, presumption, and unequaled infatuation of a handful of Abolitionists." Another convention was held at Albany in April, 1840. Of the one hundred and twenty-one delegates present, one hundred and four were from the State of New York. This convention nominated Birney of Kentucky and Earl of Pennsylvania. In the following May the great meeting of the American Anti-Slavery Society was held at New York. Nearly a thousand members were present. Garrison came loaded for large game. He brought with him on a special steamer "about four hundred and fifty," which he styled a "heart-stirring spectacle." He was in full control of the meeting and took advantage of the situation by passing resolutions disapproving the policy of the political Abolitionists as inexpedient and hurtful to the cause. Later the candidates, Birney and Earl, withdrew; nevertheless more than 7,000 votes were cast for them in the election. The west generally went to Harrison.

The third Domocratic national convention. On the 5th of May, 1840, the third Democratic national convention assembled in Baltimore. There had been some symptoms of opposition to the convention plan among Democratic leaders since the people had already nominated the candidate by unanimous choice of Van Buren. However, a call for a con-

vention came for the second time from New Hampshire. The convention was represented by all the States except Connecticut, Delaware, Virginia, South Carolina and Georgia. Governor Carroll of Tennessee, an old friend of Jackson's, was elected chairman. Before the convention made its nominations it adopted a platform of principles, couched in nine resolutions. It reiterated the Jeffersonian theory that the Constitution is an instrument of limited powers, and the government is not warranted in exercising doubtful constitutional powers. It declared the general system of internal improvements unconstitutional, likewise the attempt to charter the National Bank and that the protective system was unjust and unsound in policy. It endorsed the separation of the public deposits from banking institutions, pronounced in favor of rigid economy in the expenditure of public moneys, for the first time declared that the government had no power to interfere with the domestic institutions of the State, and denounced the agitation of the Abolitionists as dangerous to the Union. Here is the beginning of that embarrassing question of slavery as a political issue.

Democratic nominees. The convention then unanimously agreed upon Van Buren as the candidate of the party for President. Owing to the lack of unanimity on the choice of candidate for Vice-President the following resolution was adopted:

> Whereas, several of the States which have nominated Martin Van Buren as candidate for the presidency, have put in nomination different candidates for Vice-President, thus indicating a diversity of opinion as to the person best entitled to the nomination; and whereas some of the said States are not represented in this convention, therefore,
>
> Resolved, That the convention deem it expedient at the present time not to choose between the individuals in nomination, but to leave the decision to their Republican fellow citizens in the several States, trusting that before the election shall take place, their opinions will become so concentrated as to secure the choice of a Vice-President by the electoral college.

The campaign of 1840. The campaign of 1840 was the most picturesque and most exciting in our history. It marked the introduction of the famous torch-light processions and mammoth parades. At the time of the Baltimore convention the Whigs held one of its many jubilee meetings and street parades, which a speaker in the convention denominated as the Whig animal show. The Democrats were inclined to ridicule the efforts of the "Log Cabin" candidate's friends, in their "Hard Cider" campaign. The entire country had caught up the enthusiasm. The State elections of Maine, Ohio, Indiana and Georgia proved that Clay was right in his belief that any one could be elected on the Whig ticket in 1840. Van Buren received the electoral votes of but seven States, sixty in all. Harrison received the votes of nineteen States, two hundred and thirty-four in all. He was thus elected by a larger majority of the electoral vote than any other candidate in our history up to that time. Tyler received the same vote and became Vice-President.

Activity of the Liberty party. The first party in the field, with a candidate for the presidential contest of 1844, was the Liberty party. Their first general convention was in May, 1841, and Birney and Morris were named as the candidates of the party. Another convention was held in Buffalo in September, 1843. In this convention there were present one hundred and forty-eight delegates, representing twelve States. It adopted a series of twenty-five resolutions, touching the slave question in all its phases applicable to the law-making power of the government. The party policy indicated that it was still a party of one idea: the abolition of the slave system.

First accidental President. For the first half century of the nation's life there had been no occasion to apply that clause of the Constitution which provides for the presidential succession in case of the removal of the President by death or other disability. That occasion appeared in 1841, just one month after the inauguration of the Whig President. On the

4th of April, 1841, the nation was called to mourn the death of President Harrison. Vice-President Tyler was inaugurated President in accordance with the Constitution. There was some controversy over the real position of the new incumbent. It was vainly urged that he was not the real President, but, as in the case when the President pro tem. of the Senate succeeds the Vice-President, he was but the acting officer. However, this matter gave the public small concern. Tyler became the first "accidental President."

Tyler's policy. At once much speculation was indulged over his probable policy. He had never affiliated with the Whigs on principles, but had become identified with them only in their opposition to the policy of the militant Jackson. He was a Strict Constructionist, and on that basis had opposed the extension of the executive function by Jackson. He had been opposed to the tariff policy and the internal improvement policy, as well as the Bank policy. It was now a question whether, having accepted an election upon the advocacy of these issues, in a campaign in which they were widely discussed, he would prove loyal to the party in their efforts to carry the measures into effect or relapse into support of his former principles. Had he never reached the presidency this question would never have been raised, but under the circumstances it became of supreme significance to the parties. All doubt was soon cleared away. The tactless conduct of Clay, who at once outlined a policy for the new President, hastened

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the inevitable breach between the President and the Whig leaders.

Tyler vs. his party. Tyler naturally felt the authority and power of his position, and soon intimated to Clay that he would take time to consider the policy he would pursue. The break came on the Bank question. For twelve years a relentless war had been waged against the Bank supporters. Jackson consummated the complete overthrow of the Bank. Van Buren, true to his political ancestor, succeeded in properly interring the remnant he found upon his accession. Now the party of Clay and Webster was in power, and the institution was to be at once revived. A bill for that purpose was passed by both Houses of Congress, only to receive the President's veto. A second bill framed to meet his objections met a like fate. The breach between the President and the leaders of the party which had elected him became real. His Cabinet (the Harrison Cabinet, which Tyler had retained) all resigned except Webster. A manifesto was published by the Whig leaders declaring that no further affiliation would be had with the President. In the course of events Tyler became a most implacable enemy of the party leaders who had exalted him. The indignation of the party leaders was without bounds. They pointed to the reversal of the people's will expressed by the most decisive vote ever given in a presidential election, declaring that now through the caprice of one man that verdict was reversed in the most shameless manner. The President naturally sought comfort in the companionship of the enemies of his detractors. With them he took common ground and became their sponsor. He earnestly sought vindication for his position, and believed he would receive it at their hands. The Democratic leaders affected to support him, but had no thought of responding to his desires to be taken up as their candidate in the approaching election. Tyler was soon without a party, hated by the one, and suspected by the other.

Tyler, Webster and Clay. When Tyler's Cabinet resigned, the story is told that Webster inquired of Tyler where he was to go, and was answered that it depended upon his own mind. Webster is said to have replied, "If you leave it to me, Mr. President, I will stay where I am;" whereupon the President arose and took his Secretary by the hand and said, "Do that and Henry Clay is a doomed man." It is evident that Tyler believed that with the powerful aid of Webster he could draw the Whigs away from the leadership of Clay. If that was the thought of the President, he was underestimating the qualities of his antagonist. Clay outlined the policy to be pursued by his party, then announced his intention to withdraw from the Senate to take a much needed rest. His farewell to the Senate in March, 1842, was dramatic. His pathetic touches drew around him his hosts of friends, and men who had not been his friends. Among the latter was Calhoun, who had been for years estranged from him. The two aged gladiators, standing with clasped hands, was a sight for the gods. Clay's refuge at Ashland, his homestead, was the center of attraction of his host of admirers. To his home many of them journeyed. Others wrote missives. All sorts of occasions desired his eloquence. He visited many sections of the country, and wherever he went he was hailed as a chief. He was strangely popular. The Whigs seemed anxious for the chance to vote for him for President. As early as the spring of 1842 he was nominated by the Whigs of North Carolina. Soon after, similar nominations were made in Georgia and Maine. Even New York, with the memory of her former treatment still fresh, as if to make amends, gloriously commended his candidacy. A State convention of Maryland joined in the chorus of praise and named him as the standard-bearer. He attended mass meetings held in his honor. It was well understood that he would be the party's candidate in the coming contest. Webster, who might have been a competitor, surrendered all his chances for recognition by remaining in

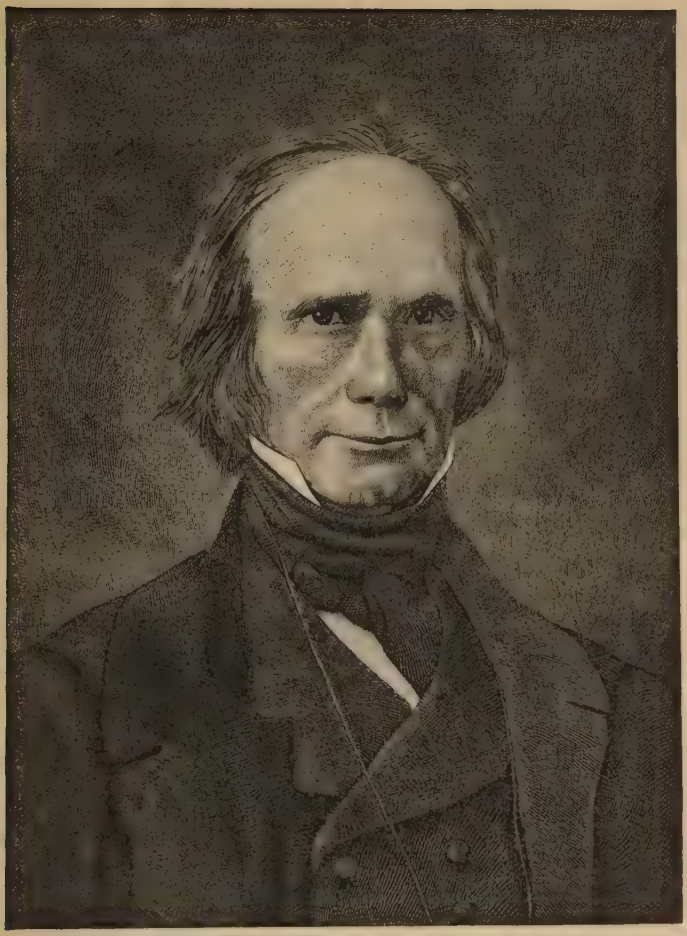
the Tyler Cabinet. His own State was not averse to the Kentucky leader. When a mutual friend desired to reconcile the two mighty leaders who had become somewhat estranged through the Tyler episodes, Clay replied to the friend, "I have done Mr. Webster no wrong, and have therefore no reconciliation to seek. Should I be a candidate for the presidency, I shall be glad to receive his support, or that of any other American citizen; but I can enter into no arrangements, make no promises, offer no pledges to obtain it."

The Whig convention of 1844. The national Whig convention was held in the convention city, Baltimore, on the 1st of May, 1844. Every State in the Union was represented. It was but a ratification meeting, aflame with enthusiasm, aroused by the magic of a matchless leader. Clay was nominated without opposition. For Vice-President, Theodore Frelinghuysen of New Jersey was nominated on the third ballot. After some speech-making, Reverdy Johnson reported a platform of principles as follows:

> Resolved, That these principles may be summed up as comprising a well regulated currency; tariff for revenue to defray the necessary expenses of the government and discriminating with special reference to the protection of the domestic labor of the country; the distribution of the proceeds from the sales of the public lands; a single term for the presidency; a reform of executive usurpations; and generally such an administration of the affairs of the country as shall impart to every branch of the public service the greatest practical efficiency, controlled by a well-regulated and wise economy.

The convention then adjourned with the political skies full of promise.

State of the Democratic party in 1844. In striking contrast with the unanimity of this convention, we now pass to notice the strenuous contest in the national Democratic convention, held in the same city, on the 27th day of the same month. The success of the Log Cabin candidate in 1840 had been looked upon by many influential Democrats as a triumph



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of buffoonery. At most they asserted that it was one of the occasions when the rabble for the time had control and in the nature of the case could not long be continued. Benton was one who held this belief. As soon as the result of the election was known, he exclaimed that the Democrats would go before the people with Martin Van Buren in the next election and triumphantly elect him. The unexpected death of Harrison and the era of "Tylerism" promised to alter matters. Tyler had a small following but it was never serious. Calhoun had some claims for the presidency and perhaps no man was better qualified for the high office than he. He had always been a Jefferson Democrat, although it is true that he had acted with the Whigs in his opposition to Jackson. Since 1842 he had been before the people as a probable candidate.

Calhoun again. From the time of the exit from the Capital of his implacable foe (Jackson) and the succession of the suave Van Buren, the South Carolinian had conducted his career in a manner to meet the approval of sincere Democrats. The ready recognition of his superior abilities accorded him on all sides and the bitterness of the nullification era having been allayed, persuaded him that the goal of his early ambitions might be looming in sight again. His State, always true to him, yearned to do him honor. He had been its pride and in him was the acme of its hope. Now the time seemed opportune for its fondest realization. Van Buren was humiliated and his leadership rejected. Calhoun's eagle eye caught the situation. He followed the plan of Clay, in announcing his intention to resign his seat in the Senate to take effect at the close of the 27th Congress. Immediately upon the acceptance of his resignation, his State, through its legislature, unanimously nominated him for the presidency.

Able, but not available. The Calhoun flag for a time was carried near the front of the column. But it was not long to remain there. He lacked the qualities of popular leadership and the skill of the manipulator. No well-informed man

would deny that he was far and away the intellectual superior of any man in his party. All the essentials that distinguish the statesman from the mere politician, this singularly brilliant man possessed in a marked degree. But his lot like that of Clay was cast in hard lines. Little did it serve him to be recognized as one of the most brilliant deductive debaters that had ever addressed the stately Senate or to be recognized as one who despised cant and sham, and fought with an eye single to the best interests of his people as he saw them. Such rank does not always commend itself to the small politician, since to him ability is not so important as availability.

Out of the race. Calhoun's first test of strength was in his causing the national convention to be deferred to the spring of 1844, against the wishes of the opposition to hold it in the autumn of 1843. This victory was only temporary, however, as it served to awaken the opposition and call into requisition the arts of the manipulator, the prince of whom was Van Buren, himself the leader of the opposition. The next test, and the one of importance, was in the manner of selecting delegates to the national convention. The Calhoun contingent insisted upon the district plan as the most democratic and fairest to all concerned. This was the opinion of the statesman rather than of the politician. To this plan the Van Buren men demurred and insisted upon the State plan. It was easier to manipulate twenty-six States than two hundred and forty-two districts. The politician's scheme was adopted and Calhoun withdrew his name from the contest.

Van Buren, Clay and the Texas question. On all sides it was agreed that the election contest would be between Clay and Van Buren. Singularly enough these political antagonists were personally quite cordial, one with the other. Van Buren visited Clay and enjoyed the hospitality of the home of the Kentuckian. Clay reminded the public that not much politics was discussed during the visit. This incident is thought to have played a very important part in the future campaign.

A new problem had arisen in the Texas matter. The annexation of that republic was being agitated and was soon to assume definite form. The Southern States generally favored the project; some of them, because it would continue the equilibrium in the Senate between the slave and the free States; others, because it had been lost in earlier negotiations to the country, which had been denounced as blind imbecility; and others, on commercial grounds. The picturesque Houston had gone into the Texas country and was followed by great numbers of citizens of the United States. They afterward complained to the Washington government of their treatment by the local authorities, and this served as a foundation for the further agitation of the various promoters of annexation.

Delicacy of the situation. The sudden appearance of this question embarrassed both Clay and Van Buren. Clay was a Southern slave-holder, but was in sympathy with the idea of gradual emancipation. He had also been the very head of the industrial policies upon which the Northern section of the country stood. Van Buren, on the other hand, had no special abhorrence to the Southern institution, but his constituency in the North might have. The public desired to know the views of the candidates upon the "Re-annexation question," as the Texas matter was diplomatically termed. Letters of inquiry came to Clay and Van Buren. Singularly, their answers quite agreed. Neither could see how the country could be annexed honorably without the consent of Mexico. Both saw in the event a cause of war between the two countries. The replies could be interpreted in no other way than adverse to the annexation project. Van Buren's letter was made public just five weeks before the Democratic convention. It was a bomb in the camp of his friends in the South. Many of the States had already instructed their delegates to support his nomination. The Texas letter confounded them. Some of the Southern leaders at once denounced the writer, others deplored the writing. The time was too short to amend mat-

ters. Mass meetings were held in various States; consultations were held in others. In various regions throughout the Southern section open professions to ignore instructions were heard on all sides, while here and there a delegate resigned to avoid embarrassment.

Democratic convention of 1844. In the midst of the excitement the convention met. All the States except South Carolina, which felt somewhat humiliated at the turn of affairs, were represented by three hundred and twenty-five delegates. The former rule of apportionment, giving each State the number of votes equal to its electoral vote, was adopted. The convention thus cast but two hundred and sixty-six votes. Early in the convention an attempt was made to adopt the two-thirds rule. A vigorous opposition to the rule at once developed, causing it to be tabled for the time being, but it was brought up again at the earliest opportunity. At last the force of precedent prevailed and the rule became again the order of the Democratic party. It was observed that the Van Buren contingent opposed the rule. Its adoption therefore on the second day was a distinct warning to him. An analysis of the vote indicated a sectional division. There were one hundred and sixty-one votes from the Northern section, and, omitting the State of South Carolina, there were one hundred and five votes from the Southern section of the country. The first ballot revealed seven candidates voted for, namely: Van Buren, who received 146 votes, 32 short of the necessary two-thirds; Cass of Michigan, 83; Johnson of Kentucky, 24; Calhoun, 6; Buchanan of Pennsylvania, 4; Woodbury of New Hampshire, 2; and Stewart of Pennsylvania, 1. For seven ballots Van Buren gradually declined from 146 to 99. While Cass gradually increased from 83 to 123, his highest. On the eighth ballot the vote stood: Van Buren, 104; Cass, 114; Buchanan, 2; Calhoun, 2; and Polk, the "Dark Horse," 44.

Polk nominated. On the ninth and last ballot the vote stood: Van Buren, 2; Cass, 29; and Polk, 233. Prior to this drift

toward Polk, an effort was made to rescind the two-thirds rule and declare Van Buren the nominee by virtue of his having received a majority vote of the delegates on the first ballot. This effort proved fruitless, making it evident that Van Buren could not be nominated. After another ballot his name was withdrawn. Texas agitation was responsible. The slavery question was at the bottom of the Texas agitation. For the first time the minority, representing the slavocracy, dictated the nomination for President. A further analysis of the vote shows that Van Buren had received 134 of the 161 votes from the Northern section, and only 12 of the 105 votes from the Southern section. This was the beginning of that fratricidal struggle which set one part of the country against the other, and lit the fires of sectional strife which blazed with increasing fury until they enveloped the entire nation in the conflagration of civil war.

Contest over Vice-President. Silas Wright of New York was nominated for Vice-President. He at once declined the honor, perhaps because he held similar views with Van Buren upon the Texas question. After an attempt to induce him to reconsider his position had failed, two ballots were taken to decide the contest between Fairfield of Maine, Woodbury, Cass, Johnson, Marcy, of New York, Stewart and Dallas. The contest was decided in favor of Dallas who received 220 votes of the 256 cast for candidates for Vice-President.

The platform. The convention adopted the platform of the party in 1840, and added a resolution concerning the application of the proceeds of the sales of public lands to national objects; another defending the use of the veto power in the President; and still another on the duty of the government to reoccupy Oregon and reannex Texas. Before adjourning, this memorable body made an effort to appease the outraged feelings of the Van Buren majority by adopting a resolution of fulsome praise of the distinguished Democrat. The resolution ended by declaring, "That we hereby tender to him, in

honorable retirement, the assurance of the deeply seated confidence, affection and respect of the American Democracy."

Tyler's fate. It is of interest to note that Tyler was ignored entirely, both in the resolutions and in the presentation of candidates. By arrangement another convention was held in Baltimore at the same time as the Democratic convention. This was in the interest of Tyler, and is said to have been made up of both Democrats and Whigs, mostly office-holders. This convention unanimously nominated Tyler, who accepted the nomination. The complete disintegration of his support, and the inevitable ridicule accompanying his canvass, induced him to withdraw from the race in a long sarcastic letter. This ended the political fortunes of the first "accidental President."

Result of the campaign. The campaign was fought by the parties upon similar lines to the preceding election. The Tyler disaffection had materially disturbed the unity of the Whigs. Their platform was brief and somewhat ambiguous. It attempted to keep before the public the questions which had been in the background of an unsuccessful party for years. The success of the Whigs had not been followed by the promised revival of industry. The new agitation of the Texas question had become acute in the nomination of Polk upon a reannexation platform. Besides, the Democrats were favored in presenting a candidate whose shield revealed no weak places from the fact that he had no political career. As the canvass proceeded Clay's anxiety over the Texas affair became great. He recognized it as the pivotal point. His anxiety induced him to commit the blunder of writing letters upon that sensitive point. He wrote to his friend, S. F. Miller of Alabama, "Personally, I could have no objection to the annexation of Texas, but I certainly should be unwilling to see the existing Union dissolved or seriously jeoparded for the sake of acquiring Texas." He further asserted that the leading and paramount object of his life was the preservation of the Union. Surely there was nothing in this to give offense to any Amer-

ican unless it was the uncompromising Abolitionist, who saw nothing in Texas but slavery, which was too dear at any price. A second letter was written in which Mr. Clay freely said: "Far from having any personal objection to the annexation of Texas, I should be glad to see it, without dishonor, without war, with the common consent of the Union, and upon just and fair terms. I do not think that the subject of slavery should affect it one way or the other." This was the honest expression of a public man upon a great question. But its honesty was no defense. After this letter was made public, there was little hope for its author. Like that of Van Buren, it could not be explained. It added nothing to his candidacy in the South, and it weakened him materially in the North. New York would decide the contest. The Democrats wisely prevailed upon Silas Wright to accept the candidacy for governor in the Empire State. On this battle-ground the issue was decided. Here, where the Whigs had been successful against the party of Van Buren in the State contests, Clay was to meet his Waterloo. It is still a question of doubt how much his defeat was due to the Abolitionists, how much to the nativist movement, how much to the anti-rent movement, and how much to fraud. It is sufficient to say that any one of these elements was strong enough to defeat him, and it was strange that the fates decreed that all of them should be arrayed against him. He lost the State by five thousand and the country at large by thirty-eight thousand popular vote, which gave Polk a majority of sixty-five in the electoral college. This election was the first in which the "Dark Horse" candidate (more common in recent years) was triumphant. Polk had defeated the shrewd Van Buren in the Democratic convention on the troublesome Texas question, and now upon the same issue he accomplished the defeat of the most popular party leader since the days of Jefferson.

CHAPTER IX

THE DECADENCE OF POLITICAL ORGANIZATION—1844-1856

The nativist movement. The national delegate convention for the nomination of candidates for President and Vice-President was ere this time thoroughly established. No further detailed accounts of these gatherings are necessary, since there is much uniformity in their composition, their authority, and their proceedings. For the contest of 1848, the first convention that was held was that of the nativist movement. This party was a new factor in politics and had its rise through a form of antagonism to Catholics, due largely to the active participation in politics by the Irish Catholics in the cities, and especially in New York, Boston, and Philadelphia. This confinement to the cities was due to the presence there of the greater number of immigrants than in the rural regions, notwithstanding many Irish immigrants had gone into rural communities. The hostility largely took on a racial color. In the Southern section the activity was largely confined to the lower strata of society. The climax in New York was a riot between Catholics and Protestants, after which a ticket was put in the field. The distinguished inventor, Samuel F. B. Morse, published letters in the *Observer* which purported to discover ulterior motives of the Catholic element. These letters aroused widespread distrust which was followed by anti-popery meetings. One such meeting in 1835 was broken up by Catholics and their sympathizers which caused an anti-Catholic ticket to be put into the field in the next election. This movement

readily affiliated with the Whigs, as the greater number of Catholics were Democrats.

Takes the name Democratic. In the year 1835, the movement organized as a National Democratic organization. It was founded upon at least three cardinal principles: (1) America for Americans; (2) anti-Catholic activity, and (3) regulation of immigration. In 1836 the party cast a large vote, but the excitement of the presidential campaign overwhelmed it generally.

American Republican party. Governor Seward's position upon the school funds in 1840 emphasized the presence of the Catholic element in politics. This incident, in connection with the appearance of Catholics on the Democratic ticket, called into being the American Republican party. This latter party declared in favor of naturalization based upon twenty-one years of residence, opposition to all foreigners in office, and the acceptance of office in any other party a disqualification for holding office in this party. The new organization elected four members of the national House of Representatives, and in general weakened the Clay vote in New York. The movement spread rapidly and by 1844 had become a political factor, known as the Native Republican party. In 1845, in Philadelphia, its first national convention was held. Fourteen States were represented by one hundred and forty-one delegates. It took the name Native American party but made no presidential nomination. Two years later, in May, it met in another convention in Pittsburg, but adjourned to meet in Philadelphia the following September, when it recommended Zachary Taylor for President and General Dearborn of Massachusetts for Vice-President.

State of the Liberty party. In November, 1847, the Liberty party met in convention at New York to nominate candidates for the contest. It nominated John P. Hale of New Hampshire, and King of Ohio. The inevitable fact in the development of all third parties was at once experienced by

this abolition movement, namely, dissension and consequent disruption. The party had never been a unit on political action. Garrison had from the beginning stood out against a political policy. Now the political wing split into factions until there were no less than five divisions representing the anti-slavery movement.

Hunkers and Barnburners. In the meantime the Democratic convention was held and the representation of New York was in trouble over slavery. The division was between the "Hunkers" and the "Barnburners." The latter represented the supporters of Van Buren and opposed the Polk régime on Texas. They appeared and asked representation in the Democratic convention, which was partially granted by seating both contesting delegations and giving to each half the whole vote. To this the "Barnburners" demurred, which called attention to the anti-slavery element of the nation by recommending Van Buren for President. This agitation caused the political Abolitionists to look toward Van Buren. The Whig party's policy of neutrality at this time was well known. Some of the radical element of the party refused to endorse a slave-holder as their candidate. Henry Wilson took the lead in forming a coalition with the dissatisfied element which extended into several States and resulted in a convention at Buffalo in August.

Free Democratic movement. Preliminary to this convention there was held a meeting at Utica, New York, of the Free Democratic convention, at which appeared delegates from New York, Ohio, Massachusetts and Wisconsin. This body put the name of Van Buren before the people as candidate for President, and Dodge of Wisconsin, for Vice-President. In Columbus, Ohio, a convention of the Liberty party, presided over by Salmon P. Chase, seemed to favor the Van Buren movement. Another convention at Worcester, Massachusetts, stirred by the eloquence of Sumner, Giddings and Charles F. Adams, favored the movement, and selected delegates to the

Buffalo convention. Its purpose was to select from the three parties delegates known to have abolition sentiments. On the 9th of August, 1848, the Buffalo convention met with delegates from seventeen States and the District of Columbia. Three slave States, Delaware, Maryland and Virginia, were represented. Charles F. Adams presided. Two candidates were presented, Van Buren and Hale. The former was nominated on a vote of 159 to 129 for Hale. The Liberty League held a convention in June, at Rochester, New York, and nominated Gerrit Smith for President, while another convention at Philadelphia, the following week, endorsed Smith.

Democratic convention of 1848. The national Democratic convention met in June in Baltimore, and was largely attended. Every State was represented. Some of the States sent large delegations to cast their allotted votes. The first contest came in the appointment of the credential committee. After a severe struggle, the two-thirds rule was again adopted. Seven candidates were balloted for. On the fourth ballot Lewis Cass of Michigan received the necessary two-thirds vote and was declared the nominee. W. O. Butler led for Vice-President over five other candidates, and on the third ballot was unanimously nominated. The convention substantially reaffirmed the platform of the preceding campaign. It also expressed sympathy with the Republican struggle of France and justified the Administration in the Mexican War, on the grounds of national honor and defense.

Attitude on the slavery question. It remained quiet upon the slavery issue, by rejecting, by the vote of 216 to 36, the following resolution: "Resolved, That the doctrine of non-interference with the rights of property of any portion of the people of this confederacy, be it in the States or Territories thereof, by any other than the parties interested in them, is the true republican doctrine recognized by this body." The convention leaders were too prudent to unfurl this challenge in the face of the Northern dissentients. The slavery issue

made Polk President in 1844 and denied him the renomination in 1848. From Jefferson to Polk every Democratic or Republican President was honored by a second nomination and all but Van Buren had been elected and served a second term, barring John Quincy Adams, who was a National Republican. The platform gave fulsome praise to the outgoing President and referred to his administration as patriotic and brilliant.

Clay and the Whig party — 1848. The Whig situation was peculiar. The ability of Clay as the party leader had precluded the appearance of the brilliant younger element of the party which is generally present in all political organizations. He had been defeated three different times for the presidency and twice for the nomination. His defeats had revealed the vulnerable places in his shield. The party fretted under further embarrassment. Webster, who had committed the political sin of refusing to resign from the Tyler Cabinet until he had perfected the treaty with England, had sufficiently atoned for the error, if it were an error, and his marked ability with his valiant service commended him to a very large element of the party.

The Whig convention. Other names, such as McLean, Corwin, Clayton and Scott, were frequently mentioned for the office. But politics stands for inconsistency, not because it is always wise, but because it frequently ignores principle for the sake of success though it be but temporary. Both Clay and Van Buren had met defeat because they declared that war with Mexico was inevitable if Texas was annexed without the consent of Mexico. Annexation was accomplished, war followed, and the Whigs fiercely denounced the President's policy. In that war two men, Scott and Taylor, had achieved victories. The first had been a candidate before the Whig convention in 1844. The latter had been before no convention. In fact Taylor did not affiliate with any party. It is alleged that he had not cast a vote for forty years. He

was a slave owner in Louisiana. But, as the hero of Monterey and Buena Vista, what matter that he had not participated in public affairs to the extent of casting a vote? What matter whether he was the owner of slaves or that he had led a victorious army in a war that had been pronounced unjust by the party? The national convention met at Philadelphia in June, 1848, Morehead of North Carolina presiding. The first ballot showed six candidates: Taylor, 111 votes; Clay, 97; Scott, 43; Webster, 22; Clayton, 4; and McLean 2. On the fourth ballot it stood: Taylor, 171; Clay, 32; Scott, 63; Webster, 13. It will be noticed that the two military candidates increased, while the civilian candidates declined gradually down to the last ballot. The convention then nominated, on the second ballot, Millard Fillmore of New York for Vice-President.

Millard Fillmore

Taylor as a candidate. It was said the Whigs had gone South for a candidate and found one whose Whig allegiance rested upon his saying that he was not in the habit of voting, but that had he been a voter in the last election he would have voted for Clay. To forestall a repetition of the Tyler experience three attempts were made to pass the following resolution: "That no candidate shall be entitled to receive the nomination of this convention, unless he has given assurances that he will abide by and support the nomination; that, if nominated, he will accept the nomination; that he will consider himself the candidate of the Whigs, and use all proper influence to bring into practical operation the principles and measures of the Whig party."

Attitude upon the slave question. Allen of Massachusetts introduced a resolution seeking to bind the citizen to support the nominee on condition that he stand upon Whig principles: "no extension of slave territory, no acquisition of foreign territory by conquest, protection to American industry, and opposition to executive usurpation." This was declared out of order. A motion to declare Taylor and Fillmore the unanimous choice of the convention also fell by the way. It was announced by a delegate from Ohio, that in order to carry that State it would be necessary to declare that Congress had the power to interfere with the introduction of slavery into any territory now possessed or which might be acquired by the United States. This was also ruled out of order.

Non-committal policy. It was apparent that the convention's work was far from satisfactory to the party. It defeated every attempt to commit the party upon the slave issue or endorse the candidates. It adjourned without defining the issue. The convention was at least consistent in having named a candidate without known principles, and in having adjourned without embarrassing him with a platform. After the adjournment, in the evening of the same day, a ratification meeting was held in the form of a mass meeting with Governor Johnson in the chair. Speeches were made by the former chairman of the convention, Coombs of Kentucky, and others. A series of seven resolutions, in the form of a platform of principles, were adopted. But they studiously avoided committing the party upon the sensitive questions of the day.

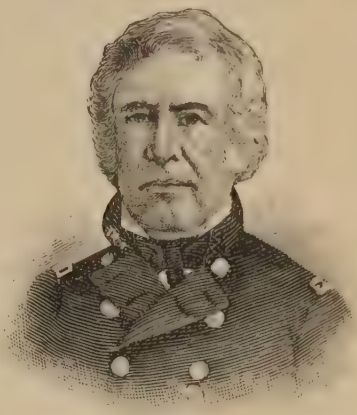
Result of election. In this contest Taylor received the votes of fifteen states — 163 in all. Eight Southern States gave him 66 votes, while seven Northern States gave him 97. Cass received the votes of fifteen States — 127 in all. Eight Northern States gave him 72 votes, while seven Southern States gave him 55 votes. The successful result of the election indicated the political wisdom of the Whigs in going before

the country non-committed. But their success was only temporary, for in less than two years the slave issue became fatally embarrassing to the victorious party. In less than a decade the Whig party, which had come into power by the errors of its opponent, became entirely disintegrated and passed into oblivion without having ever honored with the presidency one single great name.

Peculiar situation of Taylor. Taylor fell heir to a serious political situation which grew out of the Mexican War and the troublesome slave question. He had received eleven more votes from the slave-holding States than his competitor, and consequently was in a measure committed to their cause. The one supreme purpose of the Calhoun policy of annexation, which also dominated the Polk policy of the Mexican War, was to secure necessary territory in the slave-holding belt to maintain the equilibrium between the two contending sections in the national Senate. The new State of California was the first to seek admission after the Mexican War. As in the case of all prior admissions, its status on the slave issue was paramount. When it was known that the people of the proposed State had agreed by an overwhelming majority to exclude slavery from its soil, the Southern country was in a state of fury. The greatest interest surrounded the Capitol. What would the slave-holding President do?

"Omnibus bill." The threatening struggle finally reached the compromise stage, when, in the early part of 1850, Clay for the third time came upon the scene as peacemaker and proposed the famous "Omnibus bill," the Compromise of 1850, in which he endeavored to adjust the matter to the greatest possible satisfaction of all, which is to say, to the satisfaction of none. He proposed a plan which comprehended six points covering the disputed grounds, three for the North and three for the South. The points he allowed to the North were: (1) The admission of California as a free State; (2) the slave-trade was to be abolished in the District of Columbia;

and (3) the Territories of Utah and New Mexico were to be organized without mention of slavery. The points allowed to the South were: (1) A more rigid Fugitive Slave Law to be enacted and enforced; (2) Texas to be paid out of the national treasury $10,000,000 for claims upon New Mexico; and (3) Texas should not be divided into more than four States. More than once in the career of Clay he felt that dissolution of the Union was threatened. The serious contention of Calhoun and his Nullifier following, together with the loud demands for disunion from Wendell Phillips and his Abolition following, alarmed those whose greatest ambition was the perpetuation of the Federal Union.



Zachary Taylor

Clay's fears. Clay had made daily observations upon the trend of Calhoun's mind, on the one hand, and had been startled by the clamor of certain reformers in their demand for immediate dissolution of the Union, on the other. He had heard the ominous cry of Phillips, when he said, "My curse be on the Constitution of the United States." He was no less alarmed when he remembered that the great Abolitionist had said, "As to disunion, it must and will come. Calhoun wants it at one end, while Garrison wants it at the other. It is written in the counsels of God." He had heard Webster pronounce the conduct of Phillips and others as revolutionary. Here was the government, racked by uncompromising forces as irreconcilable as the forces which control the opposite poles of a magnet. The Omnibus bill was intended to accomplish the impossible task of uniting the irreconcilables. The

measure was presented on the 29th of January, 1850. On the 6th of February, Clay began his two days' speech in favor of its adoption. On the morning of that day, as he ascended the steps of the Capitol upon the arm of a friend, he showed great physical weakness, and in reply to his friend's desire that he defer his effort he said: "I consider our country in danger, and if I can be the means in any measure of averting that danger, my health or life is of little consequence." His effort was not equal to former occasions. He spoke as one delivering a last message to his compeers and never fully recovered from the effects of the exertions made in the two days' effort. The measure was now before the national Congress.

Calhoun in 1850. The eyes of the nation had fastened upon the two great constitutional expounders, Calhoun and Webster. On the fourth of March the South Carolinian entered the Senate. It had been learned that he would speak that day. His entrance was dramatic. He came wrapped in flannels. Upon his face were the marks of death. His countenance revealed a heart that was troubled. His wiry frame was bent with age and toil. His eye shot that penetrating glance which had so often commanded immediate attention. His long and brilliant service in the counsels of the nation, his seriousness of purpose which had precipitated him in the unfortunate contest with the great chief of his party, his valiant efforts in a cause that had received the death sentence from the civilized world, his brilliancy in debate which made him most at home in the arena, and his voice which for forty years had stirred all sorts of audiences, — made his entrance a moment of exciting interest. No wonder that the tears blinded many present when it was made known that, while his mental faculties were unimpaired, his physical being was unable to respond to the utterance of speech and his manuscript was handed to his friend, Senator Mason of Virginia, who read it. What a scene! The dignified Senate, accustomed to freely respond in demonstration of approval or disapproval

of what the Nestor of the South had to say, now was hushed into silence until the very lisping of the words by the reader could be heard by every auditor in the galleries. It resembled the ceremonies of a funeral occasion.

His last speech. His opening sentence was not unlike in pathos to that of Clay in February, when the latter said, "Never on any former occasion have I risen under feelings of such painful solicitation. I have seen many periods of great anxiety, peril and danger in this country, but I have never before risen to address any assemblage, so oppressed, so appalled and so anxious." So spoke Clay. The dying message of the great Nullifier to his countrymen opened with a startling utterance: "I have, Senators, from the first, believed that the agitation of the subject of slavery would, if not prevented by some effective and timely measure, end in disunion." He declared that a widely diffused sentiment pervaded the entire South, that the States could not longer remain with the drift as it was in favor of all power of the government exerted by and for the North, which showed that the South was constantly falling in the rear of the North. He seemed to breathe a spirit of Union in marked contrast with the former nullification sentiment. In the very beginning he asserted that the "agitation has been permitted to proceed with almost no attempt to resist it, until it has reached a point when it can no longer be disguised or denied that the Union is in danger. You have thus had forced upon you the greatest and the gravest question that can ever come under your consideration: How can the Union be preserved?" He declared that the compromise policy of Clay would not do it. His warning was against the continuance of the agitation. Herein he revealed his limitations. He did not properly estimate the force of the collective conscience, when aroused upon a public evil. While he seemed fully alive to the trend of public affairs, he failed fully to reckon with the moral elements involved. However, the speech produced a profound impression throughout the country.

Webster in 1850. The South had now been heard. The North awaited her time. Webster was soon to speak. His utterance was expected to recall the days of his former duels with the two South Carolinians, Calhoun and Hayne. Three days after the Senate had been hushed into silence by the prophetic utterances from the pen of Calhoun, Webster arose to speak. His speech has ever been referred to as the "Seventh of March speech," and by his biographer as the "fatal Seventh of March speech," so disappointing was it to the radical element of the North. This element had insisted that the compromise was one-sided; that it gave the North only the freedom of California, which was already assured without action of Congress. They held that all the balance of the territory was secured to the slave-holder. It was on this matter that Webster took issue with his friends. He urged that the character of the soil of these regions precluded the introduction of slavery there with greater certainty than any statute could do. He saw no reason for the re-enactment of the laws of the Almighty.

Effect of the Seventh of March speech. Perhaps no single speech delivered in the country created such wide-spread disappointment. The city of Boston had been for some years under the domination of the anti-slavery element of the city. Webster was threatened bodily injury. He was charged with surrendering not only his own principles but with prostituting those of his constituency upon the altar of ambition. Webster's conduct in ordering the speech printed and sent to the members of the legislatures of the States, and to the clergymen of the country, served as evidence that he was bidding for the presidency. Whatever might have been his purpose in the speech or in his professions to the public relative to his satisfaction with the reception it had received, he allowed it to worry him not a little as is revealed by a confidential letter to his friend, Haven, in the following September, in which he said: "I am like one who has been seasick and has gone to bed. My bed rolls and tosses by the billows of the sea over

which I have passed." Among the men of his own support who abandoned him was the renowned educator, Horace Mann, who was a congressman from the West Newton (Massachusetts) district. Mann referred to the conduct of Webster, who up to this time had been an object of great admiration to the educator, as "Lucifer descending from Heaven." Webster and his friends committed the blunder of attempting the defeat of Mann for re-election to Congress. Mann was accordingly defeated for the nomination, but was elected on an independent ticket.

Seward in 1850. That month of March, 1850, was yet to offer another remarkable speech in the Senate. Clay, Calhoun and Webster had spoken. After the "Trio" had been heard little interest was shown in the further speaking. But another voice was yet to be heard, not by a crowded Senate as in the three preceding cases, but by only a knot of senators in an empty Senate chamber. The speaker was without prestige, without great reputation, without splendid presence. He hailed from New York. He had been tinctured by anti-Masonry and as a Whig had not favored Clay in 1840. He took his place in the Senate as one with distinct ideas upon the slavery question, strongly colored in favor of abolition. He heard the speeches of his great compeers and was displeased with them all. Four days after Webster had spoken William H. Seward arose and delivered the speech from which flowed greater consequences than from all the others. He declared himself averse to the principles of compromise as a rule by which to be guided. He examined the position of Calhoun and declared it untenable on the ground that it presupposed the maintenance of equilibrium, which was contrary to the laws of growth, and could not be maintained by the decree of statute law.

His speech on eleventh of March. He dealt with the position of the New Englander in caustic terms. He announced the dangerous dogma of individual discretion in obedience to law

in the following terms, "The national domain is ours. We hold no arbitrary power over it. The Constitution regulates our stewardship. The Constitution devotes the domain to union, to justice, to defense, to welfare, and to liberty. But there is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purposes. The territory is a part of the common heritage of mankind, bestowed upon them by their Creator. Whether, therefore, I regard the welfare of the future inhabitants of these new Territories, or the security and welfare of the whole people of the United States, I cannot consent to introduce slavery into any part of this continent, which is now exempt from what seems to me so great an evil." This utterance proceeding not from an agitator, but from a political thinker, hailing as a Whig senator from a State which in the preceding election had given a greater vote to the "Free-soil" candidate than to Cass, the regular Democratic nominee, was gravely significant. This ominous sign meant a realignment of parties upon a sectional issue.

The Democratic convention of 1852. The first party in the field with its candidates was the Democratic, which met in national convention in Baltimore, on the first of June, with about three hundred delegates present. The two-thirds rule was immediately adopted, which insured a long contest. However, the contest did not arouse bitterness as in the preceding convention. In fact the convention was free from party faction. Davis of Indiana was chosen to preside. On the first ballot votes were cast for nine candidates: Cass, Buchanan, Douglas, Marcy, Butler, Houston, Dodge, Lane and Dickinson. The first four stood: 116, 93, 20 and 27 respectively. This ratio was continued with slight gains for Douglas down to the thirty-first ballot, when he received ninety-two votes with the others below him. The next highest was Buchanan with seventy-nine votes. On the thirty-fifth ballot a dark horse was brought out in the person of Pierce of New Hampshire, who received

fifteen votes from the Virginia delegation. Douglas then began to decline and Cass to increase with Marcy a close second. On the forty-eighth ballot, the four highest were: Marcy, ninety; Cass, seventy-three; Pierce, fifty-five; and Douglas, thirty-three. On the forty-ninth and last ballot, Pierce received 282 votes in all, and was declared the nominee. For Vice-President ten candidates were voted for, with W. R. King far in the lead, he having received 126 votes. The next highest was cast for Downs of Louisiana, who received but thirty votes in all. On the second ballot King was unanimously nominated.

The platform. Before adjournment, the convention adopted a lengthy platform of principles, reiterating devotion to the principles of the Declaration of Independence, the Constitution of the United States, and the Virginia and Kentucky Resolutions. On the sensitive point of slavery, the convention declared that Congress had no power to interfere with the institution of slavery and that all agitation upon the question was dangerous to the Union, that the Compromise of 1850 was accepted and would be enforced. It also resolved, "That the Democratic party will resist all attempts at renewing in Congress, or out of it, the agitation of the slavery question, under whatever shape or color the attempt may be made." If convention decrees were made seriously, the thought of preventing agitation upon this question, either in or out of Congress by party resolution, is a matter of real amusement.

The Whig convention. On the sixteenth of the same month, in the same city, was held the Whig convention. Every State was represented, three hundred delegates in all being present. It organized with Chapman of Maryland in the chair. The slavery-agitation was to be more seriously felt in the Whig organization than in the Democratic; first, because the agitation had taken deeper hold upon the Whig leaders; second, the Whig organization, having been originally effected as an opposition party, naturally held more discordant elements and perhaps the greatest number of radical members; third, the

Whig party was in power when the question assumed an acute stage, which fastened upon it the responsibility for the dangerous agitation; and last, the Whig election was due to the slave-holding States, Taylor having received the greater number of votes from that region. Hence the Whigs were destined to sail a rough sea. There were three candidates before the convention: Fillmore, Scott, and Webster. The former, as the second "accidental President" by the death of Taylor, had claims upon the office. To refuse to extend the honor of a nomination, under the circumstances, was equivalent to a refusal to endorse his administration. But Fillmore's willingness to heed the clamor of the slave power made him unacceptable to the radical wing which was rapidly growing in influence in the party. Webster had forfeited his chances in his "Seventh of March speech." His position could not win friends in the slave States, for he never condoned the wrongs of the institution; and his hopes were ruined in the North in the free States from whence his support must come.

Winfield Scott. Scott had been before the people as a presidential candidate for several years. Two national conventions had voted for him, in the latter of which he was second on the final ballot. He had qualifications of availability if not ability. He was born in Virginia, was in the War of 1812, where he had been taken prisoner and after his release had done valiant service in the remainder of the war; he had been sent with troops to Charleston by Jackson to forestall nullification; he engaged in the campaign against the Seminole Indians, and in the Mexican War he had distinguished himself in continuous succession of victories, which ended in his receiving the surrender of the Mexican capital in 1847. On the other hand his reticence upon public measures shielded him from the arrows of the agitators.

Result of the convention. On the first ballot the vote stood: Scott, 131; Fillmore, 133; and Webster, 29. Fillmore came within 14 votes of being nominated, 147 being necessary

for a choice. On the second ballot the votes of the two leading candidates were reversed. On the tenth ballot it stood: Scott, 135; Fillmore, 130; and Webster, 29. This ratio continued down to the forty-ninth ballot when it stood: Scott, 139; Fillmore, 122; Webster, 30. On the fifty-second ballot Scott was within one vote of the nomination, and on the fifty-third and last it stood: Scott, 159; Fillmore, 112; and Webster, 21. The irony of fate had decreed that the "Expounder of the Constitution" should never receive over the pitiably small vote of thirty-two in a convention in which all the States were represented, and which continued its sessions throughout six days. Again the eminent statesman was set aside to make place for the popular hero.

Free-soil convention. On the eleventh of the following August the Free-soil Democracy met in convention in Pittsburg with Henry Wilson of Massachusetts in the chair. All the States sent representatives. Delaware, Maryland, Virginia free and Kentucky were also represented. It nominated John P. Hale for President and George W. Julian for Vice-President. It then adopted a lengthy series of resolutions, twenty-two in number, generally confined to the slavery issue. The ninth resolution is the suggestive one. It declared that the compromise measures of 1850 are "inconsistent with all the principles and maxims of Democracy, and wholly inadequate to the settlement of the questions of which they are claimed to be an adjustment."

Slavery in the campaign of 1852. This put three parties before the people, all of which mentioned the compromise measures in their platforms. The Democratic party accepted them as a final solution of the question. The Whig party declared, "That the series of acts of the 32d Congress, including the Fugitive Slave Act, are received and acquiesced in by the Whig party of the United States, as a settlement in principle and substance of the dangerous and exciting questions which they embrace." It pledged itself to

maintain them and deprecated further agitation, which was pronounced dangerous and should be discountenanced. It alleged that this system was essential to maintain the nationality of the Whig party and the integrity of the Union. It will readily appear that the Whigs, having adopted the same position upon the sensitive question of slavery as the Democrats had taken, left no interest in the contest between the old parties. The Democrats gained a sweeping victory. They carried every State except Massachusetts, Vermont, Kentucky and Tennessee. This was a triumph for the Free-soil party, although it did not carry a single State. It had declared its purpose to defeat the old parties.

In the Pierce administration. Notwithstanding the proclamations of the party platforms that the slavery agitation should cease, the administration of Pierce was to experience some exciting events. It was during his term that the alarming Kansas-Nebraska agitation was on. This ugly situation with all its attendant evils blasted the career of another brilliant man — Douglas, which loss, however, was compensated by the discovery of still another destined in due time to shine with a luster undimmed and prove title to the rank of the truest American — Lincoln. The rapidly growing West gave to the nation the Territories which sought admission into the Union and which were finally admitted under the unfortunate Nebraska bill. This measure repealed the Missouri Compromise which had been observed since its enactment in 1820. By this repeal the Territory, which up to that time had been preserved to freedom, was opened to slavery. The state of the public mind upon that question in 1854 insured trouble. This legislation introduced and carried through by Northern leadership, at the head of which stood the brilliant Douglas, was the occasion for another realignment of parties. It united the Democrats and Whigs of the South, while it divided the Democrats of the North. As a result it weakened the Whigs as a party in the nation. It strengthened them in the South,

but weakened them in the North. It now appears that the one dominant issue of slavery overshadowed everything else. Calhoun, Clay and Webster had gone to their rest and their places were filled by men who met the same troublesome issue, which now extended beyond the realm of politics into that of religion where it even succeeded in disrupting churches.

The "Know-nothing" party. The first party in the field for the contest of 1856 was the American party, more generally known by the name of "Know-nothing" party; a term which grew out of the fact of its being a secret order, and its secrecy kept by its members, answering all queries relative to its proceeding by the simple phrase, "I don't know." This political element was a revival of the nativist movement, which had excited the cities of New York, Philadelphia and Boston, in 1835 and again in 1844. This revival was occasioned partly by anti-Catholic agitation, which demanded regulation of immigration, revision of the school codes looking toward restrictions upon the Catholic Church, and confining office-holding to American citizens. Its rapid growth was due to the anomalous situation of the Whig party whose policy in the preceding years had driven from its ranks most of its virile elements, which easily found a channel of escape through the American party. On the 19th of February, 1856, in the city of Philadelphia, the national council of this party met in national convention. Its purpose was to outline a plan of procedure. After three days of deliberation, which is characterized as anything but deliberation, it adopted a party platform in sixteen resolutions. The first resolution recognizes the protection of the Supreme Being; the second declares for the perpetuation of the Union; the third, that Americans must rule America; the sixth declares for non-intervention by Congress in the affairs of the State; and the thirteenth denounces the repeal of the Missouri Compromise.

Its national convention. On the anniversary of Washington's birth the national convention of the party was held in

Philadelphia. All the States except Maine, Vermont, Georgia and South Carolina were represented by two hundred and twenty-seven delegates. After permanently organizing, the convention took up the matter of platform. There was stubborn opposition to the recognition of the national council's authority to adopt a platform for the party. This came from the anti-slavery wing. This latter element introduced a resolution declaring, "That the national council has no authority to prescribe a platform of principles for this nominating convention, and that we will nominate for President and Vice-President no man who is not in favor of interdicting the introduction of slavery into territory north of 36° 30′ by Congressional action." This resolution was tabled by the vote of 141 to 59. Then by the vote of 151 to 51 the convention proceeded to name its candidates, whereupon the anti-slavery wing of the convention withdrew, and furnished the American party's contribution to the new party soon to form. On an informal ballot eleven candidates received votes, with Fillmore far in the lead. He was at once named on a formal ballot and Andrew Jackson Donelson of Tennessee was made his running mate, whereupon the convention adjourned after three days' stormy session. This party, which in 1855 had carried New York, Maryland, Kentucky, California and most of New England, received the electoral vote of Maryland only; and out of 4,000,000 votes it received but 874,534.

The Democratic convention — 1856. The Democratic party was next in the field. Its national convention, which was the seventh in its history, six having been held at Baltimore, convened on the 2d of June, 1856, in Cincinnati. All the States were represented by at least 296 delegates. The political situation presaged an exciting convention. The first real sensation was the presence of two sets of delegates from each of the States, New York and Missouri. The defeated Missouri delegation attempted to take seats in the convention, and barely escaped a riot. The door-keeper was assaulted

and knocked to the floor. Both New York delegations, the "Hards" and the "Softs," as they were nick-named, were given seats each with half the vote of the State.

Nomination of Buchanan. The convention soon reflected the embarrassment growing out of the sectional feeling apparent throughout the country. The South desired to endorse Pierce's Kansas policy by giving him the nomination. But the conservative element from the North feared the outcome and decided to favor some other candidate. Both Buchanan and Douglas had claims upon the party. Douglas had paid the price for Southern support by opening Northern territory to Southern interests, but had failed to receive their support. Buchanan seemed to have the favor of the majority of the anti-Pierce element. On the first ballot the vote stood: Buchanan, 135; Pierce, 122; Douglas, 33; and Cass, 5. On the second ballot Buchanan gained four, Pierce lost two and a half, and Douglas fell to three and a half votes. On the seventh ballot Buchanan received $143\frac{1}{2}$; Pierce, 89; and Douglas, 58 votes. On the fifteenth ballot Buchanan reached $168\frac{1}{2}$; Douglas, $118\frac{1}{2}$; while Pierce fell to $3\frac{1}{3}$ votes. On the seventeenth ballot Buchanan was unanimously nominated. Mr. Breckinridge of Kentucky was nominated for Vice-President on the second ballot.

The platform. The convention first adhered to the two-thirds rule, then adopted a lengthy platform of thirty-one resolutions. It renewed its declaration of the Jeffersonian theory of strict construction of the Constitution and of its adherence to the principles of the Virginia and Kentucky Resolutions. Upon the vital issue of slavery, it declared it was settled by the Compromise of 1850, and it resolved to resist any attempt to open the question either in or out of Congress. It declared that the Kansas-Nebraska legislation was on the lines of the Compromise of 1850, and therefore the actual residents of the Territories had the right to form a constitution, with or without slavery, and be admitted into the

Union upon terms of perfect equality with the other States. It deprecated the appearance of sectional strife and declared that if it were not restrained, it would lead to civil war and disunion.

Slavery a sectional issue. The symptoms of sectionalism created by the presence of slavery in the South could no longer be ignored. At first slavery did not assume a partizan issue. As early as 1847–48, many legislatures in the northern tier of States had pronounced against its extension into new territory. Not only the Whig legislatures of Massachusetts and New York, but also the Democratic legislatures of New Hampshire, Maine, Ohio, Illinois and Wisconsin, had specifically declared against it. In all parties there was a strong element pledged to resist its further extension. The Kansas-Nebraska legislation was the occasion for the crystallization of anti-slavery sentiment into a political party. This new party took the name of Republican, which was Jefferson's choice, while he lived. It is not known definitely where this new movement first started. Several States claim the honor. Michigan strenuously asserts her primacy. That State held a semi-centennial celebration of the Republican party's birth at Jackson, on the 6th of July, 1904. At Jackson, it is claimed, a State convention was held in response to a call signed by more than ten thousand persons. The convention adopted resolutions written by J. M. Howard and the name "Republican" was taken for the party. Opposition to the further extension of slavery was the leading plank

James Buchanan

in the platform. Similar conventions were held the same month in Ohio, Wisconsin, Vermont and Massachusetts. By the time of the campaign of 1856 these elements were fairly fused into one party, henceforth to be known as the Republican party.

First national Republican convention. Its first national convention was held in the city of Philadelphia, June 17, 1856, in which convention there were twenty-two States represented, including all the non-slave-holding States, and Delaware, Maryland and Kentucky. It was largely attended, at least 450 delegates were present and took part in the proceedings. It placed in the chair as the presiding officer, Henry S. Lane of Indiana. There was but one thought dominant, namely, the best way to restrain the further spread of the institution of African slavery. The presence of so many delegates who had previously been active in other parties was conclusive against the charge of factionalism. During a season of speech-making a tone of triumph was everywhere observed. On an informal ballot for candidates the result showed 359 votes for Fremont of California, and 196 for McLean of Ohio. Sumner and Seward also received votes. Fremont was eventually nominated by a unanimous vote. An informal ballot for Vice-President showed votes for fifteen candidates, among whom were some names destined to be placed high on honor's scroll. W. L. Dayton led with 259 votes, with Abraham Lincoln second with 110. Dayton was accordingly unanimously nominated.

Its platform. The convention then adopted the first Republican platform of principles. It declared its belief in, and adherence to, the principles of the Declaration of Independence and the Constitution of the United States. It asserted the right of Congress to prevent the further extension of slavery and pronounced slavery and polygamy twin relics of barbarism. It denounced the policy of the party in power in its dealings with Kansas. It pronounced in favor of the construction of a Pacific Railroad. It also declared in favor of

liberal appropriations for public improvements. Its well-known unanimity of purpose, its concise statement of principles, its unanimous nominations, and its enthusiastic proceedings created much speculation on the part of the leaders of the Democratic party.

The Whigs' last convention. On the seventeenth of the following September, in the city of Baltimore, the last convention of the Whig party met with delegates from all the States but Michigan, Iowa, Wisconsin, California and Texas. Bates of Missouri presided. But little enthusiasm was evinced. The convention proved that the death blow had already been struck, and that the party of Clay and Webster was suffering the pangs of speedy dissolution. It presented no candidates, but simply endorsed the "Know-nothing" standard-bearers. It declared its platform in a series of eight resolutions deploring the existence of a sectional strife — of the creation of parties upon geographical lines. It reaffirmed its devotion to the Constitution and the Union and recommended that the people should support a candidate committed to no section.

Political situation in 1856. The campaign was one of the most exciting in the country's history. It was soon discovered that the new organization was growing with amazing rapidity. The early State elections indicated Democratic defeat which in a measure aided in showing the inroads the new party was making. The result of the contest was the election of Buchanan, who, however, fell far short of a majority of the popular vote. The electoral vote stood: Buchanan, 174; Fremont, 114; and Fillmore, 8. The fact that upon an issue which had taxed the best brain and heart of the nation, a new party could form which in a single year could crystallize public sentiment sufficiently to carry eleven prominent States of the thirty forming the Union, was fair warning to the party of Jefferson and Jackson that it must satisfactorily meet the issue or be disastrously defeated. With this conviction the Democratic Administration of Buchanan opened

Influence of events upon theory. With the accession to the presidency of Andrew Jackson, it appeared that the parties changed front on political theory; that the Democrats as represented by the President had embraced the Hamiltonian, while the Whigs led by Clay had adopted the Jeffersonian, theory. This is not necessarily so. It would be nearer true to assert that the party in power found it necessary to employ the Hamilton theory, while it would be natural for the party out of power to take the opposite view. Moreover, a party can not be fairly judged by the conduct of the head. The very fact of a man's being placed at the head makes him at once a leader to be courted and feared. Jackson's imperious nature enabled him to secure a following to the temporary abandonment of political theory. His was the passion of power. His rule was Cæsarean. His character was nine-tenths will, little emotion, and not a high grade of intellectuality. His influence was sure to show in the extension of the executive function. A close analysis of the political situation of the time will show that Jefferson's expressed fears of Jackson's accession to the presidency were due to this characteristic.

As seen in the careers of public men. It will also show that this characteristic compelled Calhoun, who was at the time the greatest exponent of self-government, to break with Jackson and later to join Clay and Webster in a sort of conspiracy to censure Jackson for what they regarded as unconstitutional exercise of power. While it is admitted that this defection did not materially cripple the party in control, it did call the party back to its legitimate basis; the defense of the rights of the States and the liberties of the people.

Jackson's theory. While the whole nation is for all time indebted to the "Sage of the Hermitage" for his vigorous enforcement of national authority when it was contested by the claims of State Sovereignty in the case of South Carolina in 1832, yet no student of American history will seriously deny that his position was due not so much to his belief in that

fundamental theory of government as to his desire to compel obedience. It never pained him to enforce the laws upon the recalcitrant, whether in the army or in the nation. The point on which the dispute arose being the tariff question, the incident would naturally throw the President into the seeming position of defending the policy of protection. This statement is not wholly true, but, on the contrary, he regarded the policy as local and doubted its constitutionality. In every thing except the enforcement of extreme prerogative in the Executive, Jackson was Democratic.

The Democratic party and State rights. The regal leadership of Jackson enabled him to carry the people with him. This fact committed the Democratic party against the theory of State Sovereignty, but not State rights. The extreme view of South Carolina as expressed in the Nullification Ordinance warned the party against the possibility of too radical democratic theory, and consequently silence was observed for some time upon Jefferson's fundamental theory: liberty of the individual and the rights of the State. However, when the troublesome question of slavery arose, the doctrines were again proclaimed in no uncertain tones. The party repeated in every platform from 1840 to the time of the Civil War the policy of strict construction of the Constitution and pledged itself to protect the rights of the States against undue interference by the national government.

The difference between parties constitutional. The opposition to the re-chartering of the Bank, which found its way into almost every platform from the time it received the death sentence from Jackson to the Civil War, should be placed upon a constitutional basis. Upon the same grounds should be placed the opposition to the Whig policy of internal improvements and the American system of protection. When these issues were superseded by the more acute one of slavery, the Democratic party sought to appease the wrath of the South and allay the fears of the slavocracy by denying to Congress

the power to interfere with the domestic institutions of the several States. This constitutional doctrine of State protection was extended to the Territories as well as to other places where Congress had control, as in the District of Columbia, the dock yards, navy yards, etc.

Democratic party holds to the Resolutions of 1798-1799. In 1856, when the Republican party disturbed the repose of Democratic leaders, the latter in convention assembled took advanced position on the doctrine of State rights and resolved "That the Democratic party will faithfully abide by and uphold the principles laid down in the Kentucky Resolutions of 1797 and 1798, and in the report of Mr. Madison to the Virginia legislature in 1799; that it adopts these principles as constituting one of the main foundations of its political creed and is resolved to carry them out in their obvious meaning and import." This was true Jeffersonian theory. While the pronouncement was stimulated by the critical situation of the Union over the agitation of the slavery issue, it did no violence to Democratic doctrine to make it. It was the determination of the slavocracy to use the principle to protect the peculiar institution that led to Civil War. This extreme, however, was not reached by the whole party, but only by the slaveholding section of it.

Slavery and State rights. When the issue was made up between Secession and national integrity, which precipitated war, the greatest possible test was submitted to the Strict Constructionists. It was the extreme test which was probably the legitimate outcome of the theory of liberty of the individual and rights of the State carried to an ultimate conclusion. In this crisis the party of Jefferson divided upon the slavery question rather than political theory, and cast 2,223,110 votes for its two candidates: 1,375,157 for the leader in the free States and 847,953 for the leader in the slave States. The Hamiltonian theory, now represented by Lincoln, cast about the same number of votes, but Lincoln received only 1,866,452

votes. In four years the Jeffersonian following fell off in the canvass 420,873 votes, while the Hamiltonian gained 347,213.

The Democrats and the war. This disparity can be accounted for upon at least two grounds, namely: the existence of the war favored the vote cast for the party in power, which was prosecuting it to a successful end; the right to vote was extended to the soldier on the field which increased the vote of the party in power. The extreme length to which the slavocracy had carried its contention caused many desertions from the party. However, it must be conceded that while the following of the opposition did not support Lincoln, the greater portion of it did support the government. It is unfair to assert that the 1,802,237 men who voted for McClellan against Lincoln in 1864 opposed the war, although it was prosecuted by the party in opposition to them. However, the blow which war gave the Jefferson theory was almost sufficient to destroy the party in both the State and the nation, except in the slave-holding section of the country.

The Democracy of Lincoln. Upon the question of slavery, Lincoln and his party became the exponents of the Jefferson theory of individual liberty. Jefferson himself never went further in the advocacy of this theory than Lincoln went in practise. But it would not be correct to argue from this that the two men were votaries of the same political theories. Jefferson espoused the doctrine of individual liberty from clearly defined belief, while Lincoln put it into execution as a war measure. Lincoln was not unlike Jefferson in his supreme faith in the people. Perhaps he was never surpassed in this point. But in all that distinguished the loose from the strict construction, national supremacy from State Sovereignty, the Hamiltonian from the Jeffersonian theory of politics, Lincoln essentially belonged to the former in both profession and practise.

CHAPTER X

JOHN CALDWELL CALHOUN, THE EXPONENT OF NULLIFICATION

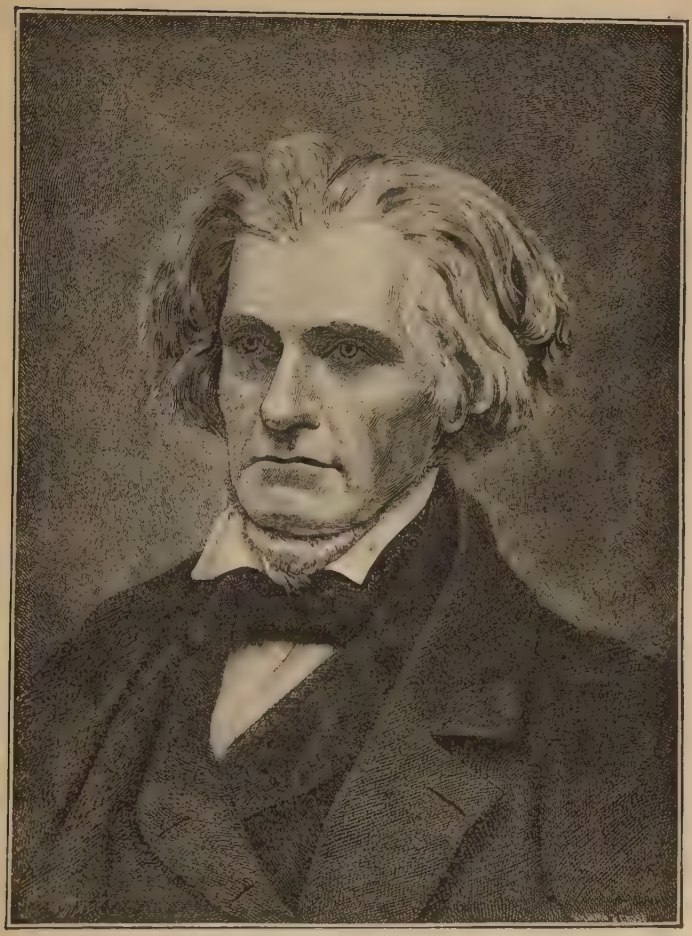
Dramatic figure. One of the most dramatic figures in the political history of the United States was he whose name heads this chapter; dramatic because of the tragic seriousness with which he defended losing issues. In the zenith of his power he espoused for the sake of a theory the dogma of State Sovereignty, and later in life became not only the defender, but the eulogist, of an institution which civilization had decreed must cease. The brilliancy with which he espoused his favorite dogma and the sincerity he manifested in defense of slavery render his career an interesting chapter in the political history of the country.

The real issue between parties. It will be remembered that the first formal pronouncement of the State rights theory was made by the legislatures of Kentucky and Virginia in the Resolutions of 1798, 1799, and 1800. Other States at various times promulgated the same theory. But the most conspicuous action, aside from that of Kentucky and Virginia, was that of the Hartford convention in 1814. Radical methods were threatened by that convention in relief of the States from the burdens entailed by the general government. The war of 1812 had largely destroyed the commerce of New England. This was declared unnecessary and the government was assailed. Quite naturally the party in power — the Jeffersonian, or the Strict Constructionists — defended its action,

as the Hamiltonians, or the Loose Constructionists, defended the enactment of the Alien and Sedition Laws against which the Resolutions of 1798–1800 were passed. The dominant party sought relief in a threefold policy, comprehending the tariff with the protection feature, a National Bank, and internal improvements.

Early recognition of the talents of Calhoun. Conspicuous in this remedial legislation was John C. Calhoun, whose brilliant parts led the Speaker of the House of Representatives, Henry Clay, to place him upon the Committee of Foreign Affairs where he at once took high rank among his colleagues. His first speech in Congress was made before he was thirty years old. It was upon the war resolutions in December, 1811. He plunged with the vigor of buoyant youth and penetrating intellect into the support of President Madison in the prosecution of the war. At the close of the war he was one of the most active in the legislation designed to relieve the country of the inevitable effects of war. Hence his espousal of the nationalizing policy. When the question of constitutionality was injected by the opponents of the Administration, he answered it upon the ground of national defense. As Monroe's Secretary of War he gave no sign of change of theory, but was consistent in requiring an effective administration of the government. His rapid appreciation put him in the ranks of those mentioned for the presidency. He withdrew from the race for the presidency and accepted the nomination for the vice-presidency.

Calhoun and the administration of Adams. Calhoun affected to take offense at this thwarting of the people's will. He pretended that the House had no right to ignore the pleasure of the voters. Therein the President and Vice-President disagreed. There is evidence that Calhoun took delight in the bitter opposition waged against the President from the opening of the administration to its close. At any rate it is true that as presiding officer of the Senate he permitted the most scurrilous



JOHN C. CALHOUN

attacks upon the President by leaders of the opposition. He regarded the appointment of Henry Clay to the Secretaryship of State as the result of a bargain, although abundant evidence clears Clay of suspicion.

Calhoun as Vice-President. As Vice-President it was his duty to preside over the Senate. This duty precluded his taking part in the legislation of that body. Only in case of a tie vote was the presiding officer permitted to vote. This circumstance favored Calhoun's deliberative turn of mind to weigh and consider policies in which he had no part in enforcing. The conditions which won his support for the nationalizing policy of a protective tariff, National Bank, and internal improvements were no longer present. A surplus was being collected in the United States treasury and the national debt was soon to be paid off.

Calhoun of 1824 in contrast with himself in 1816. Already a well-defined opposition to the protective policy was developing in the South and in the North. When the tariff measure came up in 1824, it was discovered that there was great confusion as compared with the legislation of 1816. The support of the measure was no longer from the Calhoun contingent, nor its opposition from the Webster influence. From the enactment of this law the question assumed a sectional interest. The cotton States insisted that the policy was against their interest, while the manufacturing sections demanded its continuance. In 1827, in the city of Harrisburg, the manufacturers' convention urged upon the country the need of the adoption of the "American system." In 1828 Congress enacted a law which responded to the desires of the manufactu ing interests. By this time the State of South Carolina was becoming enraged to the point of resistance.

The "Exposition." The enforced silence of Calhoun was now broken. At the request of friends in his State he wrote his "Exposition." This document was written in 1828 primarily to show that a law like the "bill of Abominations" was

unconstitutional and therefore of no force; that it favored one section as against the other, that it placed the burdens upon one section and bestowed the benefits upon another, that although it falls under the head of tax, it is really a bounty. He asserts that the staple States are by nature shut out from the benefits of the manufacturer and must remain largely the exporting section and therefore the chief sufferer.

The doctrines of the "Exposition." He then enters into an exposition of his political theory. All government rests upon the principle that "irresponsible power is inconsistent with liberty and must corrupt those who exercise it." There is a tendency to centralization of power. The framers of the Constitution provided against this tendency by balancing the powers between the general government and the States, allowing the former to exercise only those which are expressly delegated and reserving all others to the States. Our liberty is endangered most by the abuse of delegated powers and a tyranny of the stronger over the weaker interest. He stated his view of the powers of the States and general government as follows:

> Our system consists of two distinct governments. The general powers expressly delegated to the general government are subject to its sole and separate control, and the States cannot, without violating the constitutional compact, check or counteract its movements so long as they are confined to the proper sphere. So also the peculiar and local powers reserved to the States are subject to their exclusive control. Nor can the general government interfere in any manner without violating the Constitution. The Constitution has formed the States into a community only to the extent of their common interest, leaving them distinct and independent as to all other interests.

He declared that so long as this nice balance was maintained, like the equable pressure from the atmosphere, all would benefit.

Nullification. Then came the announcement of the far-reaching proposition that whether the general government

has violated the relation between it and the States is a question for the State to decide so far as it is concerned; that the State is the judge, not only of the infraction but of the remedy as well. This is an elaborate defense of the theory of State interposition, of State veto, of nullification. Here is where Calhoun certainly parts company with Jefferson and Madison, although he strenuously insisted that he was in consonance with the theory expressed in the Resolutions of 1799. The clause to which he constantly reverted is found in Jefferson's draft, and is in these words:

> In cases of abuse of delegated powers, the members of the general government being chosen by the people, a change by the people would be the constitutional remedy; but when powers have been assumed which have not been delegated, a nullification of the act is the right remedy; that every State has a natural right in cases not within the compact (*casus non fœderis*) to nullify of their own authority all assumption of power by others within their limit; that without the right they would be under the dominion, absolute and unlimited, of whatsoever might exercise this right of judgment for them.

Jefferson and nullification. This passage was in the original draft of Jefferson, but was not incorporated in the resolutions adopted by the Legislature of Kentucky. Upon this resolution Calhoun placed his claim that he was announcing the position of the founder of the Democratic party when he wrote in his "Exposition." "If the State should decide that the question of which we complain is unconstitutional, it will then determine in what manner they ought to be declared null and void within the limits of the State; which solemn declaration, based upon the rights as a member of Union, would be obligatory not only on her own citizens but on the general government itself. "The author of this remarkable statement contended that nullification was a constitutional remedy, that nullification was not Secession; that the nullifying State was still in the Union maintaining its true relation to the co-States and the general government. This document which comprises

fifty-seven pages in his Works closed with the declaration that if the tariff system be persevered in, it was the duty of the State to interpose, — "a duty to herself, to the Union, to the present and to future generations, and to the cause of liberty the world over, to arrest the progress of usurpation which, if not arrested, must in its consequence corrupt the public morals and destroy the liberty of the country."

Reception of the exposition. Since this exposition came from the pen of the Vice-President whose oath bound him to protect the Constitution, much bitterness from various quarters toward him was manifested. On the other hand, when at the close of the session he returned home he was received with a filial affection by the people of his State who appealed to him to know what action should be taken.

Second pronouncement. Believing the election and inauguration of Jackson would rectify the conditions complained of, he urged no action. These hopes were soon shattered and on the 26th of July, 1831, Calhoun made his second pronouncement in his Address on Federal Relations, in which he strenuously contended that his theory was consonant with loyalty to the Union: "I yield to none, I trust, in a deep and sincere attachment to our political institutions, and the Union of these States. I never breathed an opposite sentiment." He declared he had ever held the Union as the preserver of the liberty of the people, but as between liberty and union, the former must be preserved. It was in this address that he announced the theory that the relation between the general government and the States was that of agency, in which the States were the principal, and the general government the agent. The Constitution is a compact for the States and the general government was but its creature. It is therefore "a government emanating from a compact between sovereigns, partaking in its natural object of the character of a joint commission appointed to superintend and administer the interests in which all are jointly concerned; but having beyond its

proper sphere no more power than if it did not exist." The "proper sphere" in this case was the question for the States to determine, otherwise the principal is subject to the agent, the creator to the creature.

His report to South Carolina. In the following November he prepared for the Legislature of South Carolina a report on Federal Relations, in which he repeated the tenets of his dogma; that the Constitution was a compact between the States; that the government was the creature of the compact in the relation of principal and agent; that the State was judge of the infraction of its relation to the general government; that the State had the constitutional right to veto the unconstitutional act; that the primary allegiance of the citizen was to the State; that the State was both *in* and *out* of the Union at the same time; *in* as pertains to the delegated powers, and *out* as pertains to the reserved powers.

View of history. In this report he drew upon the history of the operations of the colonies and the government to prove his contention. He called attention to the wording of Lee's resolution: "These colonies are and of right ought to be free and independent States," with emphasis upon the last words. He declared that, as independent States, they announced and secured their independence; then, as independent States, they entered into the confederation and conducted the government under the "league of friendship" in which each State retained its sovereignty by express stipulation; as independent sovereign States, they entered the Federal convention and there acted as such; as independent sovereign States, they called conventions to act upon the ratification or rejection of the Constitution as it came from the convention. The Federal character of the government, for which the Constitution was to become the organic law, was shown by the specific requirement that the ratification of three-fourths of the States was necessary to give it effect, and then only among the States which had ratified it. The States refusing to ratify it were

regarded as foreign in their relation to the government under the Constitution. This was proved in the case of North Carolina and Rhode Island which refused for a time to ratify.

His conclusions. He insisted that this Federal character which presupposed the sovereignty of the States was still retained by the States after ratification, as revealed in the article providing for amendment, which stipulated the ratification of the same majority of the States acting as States. Here his argument fails. He did not mention that when the necessary majority ratified the amendment it became operative in the States which refused to ratify with equal force as in the ratifying States. He claimed that the method of electing senators and the President recognized the sovereignty of the States. With much confidence he demanded to know by what specific act, and at what time the government ceased to be a Federal, to become a consolidated Union. He admitted that the States had granted sovereignty to the general government in certain matters, but insisted that they retained all they did not grant. He here promulgated the principle of division of sovereignty: a part in the nation and a part in the States. The former is sovereign in delegated powers and in those only, while the latter is sovereign in all powers reserved. The general government could do only what had been delegated to it by the States through the Constitution, while the States could do all things not delegated by them to the general government through the Constitution or denied to them by it. The constitution-making power is in the States while the law-making power is in the government. The latter must be subject to the former else the creature becomes superior to its creator. Any law which ignores this relation is void for want of sanction.

Address to the people of South Carolina. At the close of its session in 1831 the Legislature of his State requested him to prepare an address to the people of South Carolina, to which he frankly responded:

"To us it seems an inevitable consequence that a State, as a party to a compact, and reserving under it the separate and exclusive exercise of important sovereign powers, has a right to judge of its infractions, and to interpose her authority for the maintenance of her reserved rights — she being the sole judge of the manner and measure of her redress — and that the exercise of this right is neither Secession nor rebellion, — the State's object being simply to protect its citizens against encroachments; an act in its principles and object perfectly distinguishable from either of the others, and which cannot be confounded with them without a strange confusion of ideas."

If the principle of State interposition is denied, there is no protection of the minority against the tyranny of the majority. A majority unrestrained is no less despotism than the one man power in the monarchies of the past. This fear of the majority revealed a spirit of sectionalism.

The interests of North and South compared. He compared the interests of the North with those of the South, saying: "*They* are in favor of high duties, *we* of low; *they* advocate their increase and continuance, *we* their diminution and repeal; *they* support extravagant appropriations for internal improvements, *we* oppose these and all other wasteful expenditures; and, finally, *they* favor a consolidated government of unlimited powers, and *we*, a Federal and limited one. We find them in a fixed and settled majority and we in a like minority." He argued that had this balance of power in favor of the manufacturing sections been the result of natural law, his people would not have made complaint. But it had been due to a policy of favoritism on the part of the general government, which gives evidence of a desire to continue it. The only constitutional restraint of this deplorable tendency in his judgment was nullification. He still insisted that the Constitution in its sphere was the only sure guaranty of the nation's safety and respectability abroad, and harmony and peace at home. He urged a correction of the abuse without the hazard of benefits.

Sincere advocacy. Up to this time the numerous pronouncements of Calhoun were entirely free from bitterness, but tinged

with a spirit of sadness. The people of his State were rapidly approaching what he and they believed to be a crisis. The agitation in Congress resulted in a lowering of the duties prescribed in the bill of 1828, but the bill still retained the protective feature. The measure was passed, signed by the President, and became law on the 14th day of July, 1832. All hope which might have been placed in the Administration's abandonment of the protective theory, was now gone.

Letter to Governor Hamilton. On the last day of July Governor Hamilton, in a letter, requested Calhoun to submit a fuller statement of his views relative to the right of a State to interpose against a Federal law which the State might deem unconstitutional. In response to this request on the 28th of August, 1832, Calhoun submitted a carefully written treatise upon the theory of the relation between the States and the general government which is the most comprehensive yet from his pen. The main points may be summarized as follows:

1. The Constitution is a compact made by sovereign States.
2. The relation is that of agency; the States are the principal, the government the agent.
3. The Union is that of States as communities, not a union of individuals.
4. Citizens knew no fealty except State fealty until after ratification, which ratification did not destroy it.
5. The State is the judge of the constitutionality of a law so far as it applies to the State.
6. As the judge of the infraction, it is also sole judge of the remedy as to character and extent.
7. The general government cannot enforce its construction against the State any more than the State can enforce its construction against the nation.
8. The phrase "law and equity" in the Constitution does not extend to the Supreme Court sole jurisdiction in cases which involve the sovereignty of the State.
9. An unrestrained majority is no less despotic than the real despot, a fact provided against by the framers of the Constitution in the reservation of powers in the States.

10. These facts are not constructive, but are borne out by the history of the establishment of the general government, and supported by the Resolutions of 1799.

11. State interposition against the execution of an unconstitutional law is not Secession.

12. Nullification is a constitutional remedy against such law.

Nullification in South Carolina. There could be little doubt what effect such a presentation from the pen of Calhoun would have upon his admirers, in his State at least. South Carolina was aflame with his doctrine. However, it should be remembered that not all its citizens were affected by it. A very strong element against the dangerous dogma was led by Petigru and Poinsett, ably seconded by ex-Governor Manning, Judge Smith and Colonel Drayton. The test in the contest in the State came on the question of calling a convention to take action in line with the suggestions of the Nullifiers. In this struggle the Calhoun contingent won, and upon the 19th of November, 1832, the famous Nullification convention met, and five days later startled the country by the adoption of the unfortunate Nullification Ordinance, described elsewhere in this volume. Universal concern was felt at what the attitude of President Jackson would be. But the people were relieved on the 10th of December when his proclamation made known his intention to enforce the laws.

Attitude of Jackson. Senator Robert Y. Hayne of South Carolina resigned his post in the Senate to become governor of his State, to which he had been elected, and Calhoun resigned the vice-presidency to take the seat in the Senate vacated by Hayne. He entered this chamber which was destined to be his chief arena for the next twenty-eight years at a time when he was regarded by no small number of persons as possessed of treasonable designs. His manner in taking the oath to support the Constitution went far to remove suspicion. In less than a month after he had taken his seat the President's message asking for the means to enforce the laws where they might

be resisted was read in the Senate. In response to this request, a bill for the enforcement of the revenue laws was reported. This is the famous Force bill, otherwise known as the "Bloody bill."

Calhoun resolutions. Calhoun, on whom most interest was centered, introduced a series of three resolutions. The first declared the States to be united as parties to a constitutional compact, to which the people of each State acceded as a separate and sovereign community. The Union, of which the compact is the bond, is a union *between the States ratifying* the same.

The second declared the government to be one of delegated powers, and when it attempts to exercise powers not delegated to it its acts are unauthorized, void and of no effect; that the general government is not the final judge of the powers delegated to it; that each (general government and State) has an equal right to judge for itself, both as to the infraction and the mode of redress.

The third declared that recent tendencies had been to exercise unconstitutional authority, to the subversion of the sovereignty of the States, which would inevitably destroy the Federal character of the Union and create in its stead a consolidated government without constitutional check. This must necessarily terminate in the loss of liberty itself. The resolutions were tabled and the Force bill came up for adoption.

Calhoun against Webster. This was the occasion for the great debate between Calhoun and Webster. Calhoun had presided in the Senate during the spectacular display of forensic eloquence by Webster and Hayne and was certainly the ablest judge upon the issue in the contest save Webster himself. He well knew the character of the weapons in the arsenal of his compeer. He was aware that his armor was all but invulnerable to the most powerful shafts of State Sovereignty and nullification. He waited for Webster to open the debate. Refusing longer to delay, on the 15th of February he addressed the Senate and completed his argument on the

16th. Up to this time his efforts had been confined to the pen. Now he was in the forum. He was to speak upon a cause dear to him. He was made aware that the Southern congressmen were not in harmony with his radical views. It was his duty to convince them. In the career of this remarkable man, either before or since, he never reached a higher plane than on this occasion.

Calhoun restates his doctrines. In this lengthy exposition there is little he had not already stated. He took his stand upon the Virginia and Kentucky Resolutions and appealed to the theory of Jefferson in defense of his contention. He warned the country against an attempt to use force to execute unconstitutional laws, which meant that the legislation upon the tariff was unconstitutional and could not be enforced. He declared that no matter how strong the Administration was upon the side of power, the love of liberty on the part of the people of his State was stronger. The closing sentence of this speech has been quoted against him in proof that his position was the result of disappointed ambition: "Nor do I repine that the duty, so difficult to be discharged, of defending the reserved powers against apparently such fearful odds, has been assigned to us. To discharge it successfully requires the highest qualities, moral and intellectual; and should we perform it with a zeal and ability proportioned to its magnitude, instead of mere planters, our section will become distinguished for its patriots and statesmen. But, on the other hand, if we prove unworthy of the trust — if we yield to the steady encroachments of power — the severest calamity and most debasing corruption will overspread the land."

The reply. At the close of this able effort Daniel Webster arose to reply. His speech was not the rhetorical performance that his reply to Hayne was, but it was the clearest and most powerful exposition that the government is one whose Constitution is the fundamental law, and not a compact between sovereign States, in the history of the country. Upon the

26th of February Calhoun replied to Webster, but he added little to what he had already said. The partizans of the Nullifier claim him the victor, but such is not the verdict of subsequent time.

The Compromise reached. It is not the purpose to give a history of nullification, only so much of it as is essential to develop the political theory of its greatest defender. It is asserted that Calhoun desisted from further agitation because the gibbet faced him with Jackson as executioner. The facts do not warrant this statement. Calhoun was too well informed in executive prerogative to be alarmed by threats of that character. On the contrary, through the interposition of an element led by Senator Clay, a compromise was reached which provided for the gradual reduction of the tariff to a revenue basis. Ten years were allotted to reach this basis.

Calhoun and sectionalism. It is charged against Calhoun with some show of reason that his most anxious hope was to unite the South in an effort to secure certain concessions. He labored to accomplish this in the nullification movement. On his failure to effect it by this measure, he took up the slavery question as the best method to accomplish it. We think this is an unsound judgment. Any attempt to explain his attitude other than in the light of his political theory will end in error. His genius, like that of Jefferson, was aflame with the love of liberty. And while his philosophy did not spell the word in as large letters as Jefferson's, it did apply it to secure the self-government and the recognition of the sovereignty of the States. The judgment which declares he could not see beyond his own State is hardly fair. It is true that his references were to his own State, but he applied his principle to all the States, both North and South.

His affiliation in 1834. With this in view, his attitude in opposing President Jackson's policy of the removal of the deposits, and various other measures, until he found himself in alliance with Webster and Clay against the Administration

is explicable. He declared on the Senate floor in 1834 that he belonged to no party. In 1839 he again asserted that he had but one law of action, and that was his duty; and that law he would follow if it compelled him to travel alone. When he refused to act with his former associates and was twitted for his desertion he replied, "I belong to the old Republican State Rights party of 1798. To that, and that alone, I owe fidelity, and by that I shall stand through every change, and in spite of every difficulty. Its creed is to be found in the Kentucky Resolutions and the Virginia Resolutions and Report, and its policy is to confine the action of this government within the narrowest limits compatible with the peace and security of these States, and the objects for which the Union was expressly formed." Whatever might be said of his inconsistency, no one will charge him with varying his political theory from 1828 to the hour of his death. In the twenty-two years of agitation he strenuously maintained his doctrine of State Sovereignty and lived to see it adopted by the Southern States as a means of protecting the "peculiar institution" identified with them from the beginning. His passion for local self-government led him to defend the non-interference of Congress with the "peculiar institution," not for the sake of the institution so much as for the recognition of his favorite dogma of State Sovereignty and its corollary, nullification.

This view confirmed. This position is confirmed by his report on that part of the President's message which related to the adoption of efficient measures to prevent the circulation of incendiary abolition petitions through the mail, February 4, 1836. The President had urged that Congress should pass a law prohibiting under severe penalty the transmission of incendiary publications through the mail intended to instigate the slaves to insurrection. Calhoun wrote the report of the committee to which the matter had been referred. He declared that Congress had not the power to enact such a law, that it would be a violation of one of the most sacred provi-

sions of the Constitution and subversive of reserved powers essential to the preservation of the domestic institutions of the slave-holding States, and with them their peace and security. He also contended that whether a paper was incendiary or not is not a question for Congress, but for the State. While the report breathes the strongest possible attachment to the institution of slavery, it denies to Congress the power to enact laws for its preservation, on the ground that its preservation must be left to the States.

Influence of the slave question. From the last years of Jackson's administration up to the Civil War the slavery question overshadowed all others. The discussion upon it took various forms. The reception of abolition petitions was an early occasion for heated addresses in Congress. In December, 1837, Calhoun attempted to meet and arrest the further progress of this commotion, by a series of six resolutions. The first three comprehended his conception of the character of the government. The last three were devoted to a defense of the "peculiar institution." His published speeches show his activity in these years. He made no less than ten speeches in 1837 upon various questions occupying the attention of Congress, such as the separation of the government from the banking business, the Independent Treasury bill, the army, and the reduction of duties. This activity was kept up with little interruption until he entered Tyler's Cabinet to secure the annexation of Texas. His last years were absorbed with the security of the institution of slavery. In his defense of it, he went to the extent of declaring the relation the best possible for both races. He insisted that the slave in the South was much better cared for than the laboring man in the manufacturing districts of England. His condition as a slave in a Christian country was much to be preferred to that of a savage in Africa. With the marvelous progress of abolition sentiment throughout the free States, Calhoun kept pace in his effort to unify the slave States in their opposition.

The Memphis convention. On the 13th day of November, 1845, he presided over a convention of delegates from the Southern States, held in Memphis. His address was a lucid statement of the situation growing out of the slavery agitation, and the remedy he proposed. In this address he avoided radical measures, that he might not defeat the purpose of a union of forces. The convention adopted an address which closed with an appeal to stand united in defense of the liberty and equality of the States. At last he found the issue which served to accomplish his long sought purpose to unify the people of his section upon his theory of government. He well knew that the action of the co-slave States in resisting his nullification idea, had defeated it beyond hope of revival as an abstract proposition. Now the slavery issue had become so dominant that he felt sure of his ground. An examination of his public utterances during the last decade of his life, without reference to his fundamental theory of State Sovereignty, would induce the belief that the slave question was the ruling thought of his life. A deeper investigation will show that this institution was the occasion for enforcing upon his countrymen a recognition of the force of his political theory.

His last written work. In the hours of the country's greatest excitement, when the balance of power was passing into the control of the free States, thereby destroying the equilibrium in the Senate so long maintained between the slave and the free States, during which time the terms *Secession* and *disunion* were frequently heard, Calhoun put in permanent form his theories of government, in the greatest and most far-reaching treatise his brilliant mind produced. It was his last work and should be regarded as the matured judgment of his ripened years. This treatise is arranged under two heads: the first, "A Disquisition on Government," and the second, "A Discourse on the Constitution and Government of the United States." The first was copied before his death, but evidently it had not been re-examined by him. The second

was found in his own handwriting upon loose sheets of paper. The two together occupy over four hundred pages of his Works and are the source in which is to be found the best statement of his political theory. It is unnecessary here to analyze it, as it contains nothing that had not been noted in the various documents here examined. It is, however, conclusive that his ripest thought was not upon slavery, but upon political theory, under which, when once recognized, slavery would be secure.

His last speech. In his last great speech in the Senate, read by his friend Senator Mason of Virginia, which was written upon the slave issue, he still professed great attachment to the Union. He did not endorse Secession, but said there was a conviction in the South that they were left to the alternative of choosing between abolition and Secession, and he warned against further continuing the agitation. His mistake was in believing that if Congress would refuse to entertain any measures touching the sensitive issue, the agitation would cease; and therefore if the Union was endangered the fault was not with the South, but with the government which permitted the agitation to continue. During all these years of agitation his effort to commit the Democratic party to his extreme views was futile. At the very threshold he was met by President Jackson, the head of his party, as well as the head of the nation. However, by 1840, he saw this party adopt a platform committed against a protective tariff, internal improvements, Federal assumption of State debts, and a declaration that the government had no constitutional authority to interfere or control the domestic institution of the several States. These resolutions were incorporated in the party's platforms of 1844 and 1848.

Calhoun's passion for local self-government led him to the precipice of State interposition against the enforcement of an enactment of the general government, only one step removed from the abyss of disunion.

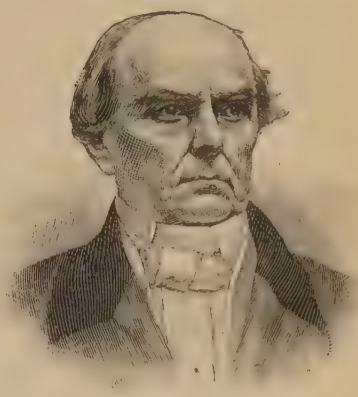
CHAPTER XI

DANIEL WEBSTER, THE EXPONENT OF CONSTITUTIONAL SUPREMACY

Webster as a Partizan. Among the brilliant names that adorn our national history from 1820 to 1850, that of Daniel Webster has particular significance. He had attracted much attention by brilliant addresses upon the War of 1812 and had come into great favor before the end of the Virginia dynasty which closed with the administration of Monroe in 1825. His début in public life was as a radical partizan of the Federalist persuasion. Although extremely national in his theory, his party spirit led him to withhold support of the Administration in measures of far-reaching nationality. When later the Virginia dynasty gave way to the second Adams administration, which continued the policy of nationality, Webster, who had assisted in the choice of Adams over Jackson, valiantly supported his chief in his measures. This afforded him opportunity to give his talents full range with no violence to his political theory.

Transitional period. This is the period in which history records the transition of statesmen; when Calhoun was transformed from a Protectionist into a Free-trader, and Webster from a Free-trader into a Protectionist. This apparent inconsistency has a rational explanation more favorable to Webster than to Calhoun. The latter admitted that he had favored the protective system and had ridiculed the constitutional objections in 1816, but he explains that he did it in the enthu-

siasm of youth and at a time when he had made no preparation. On the other hand, Webster's opposition to the protective system in 1816 was not put upon a constitutional basis, but upon expediency. He did not argue that the system *could not*, but that it *should not* be adopted. Then later when it became the policy of the government, against his influence, and many industries had been established upon the protective schedule, many of which were in his own part of the country, he deferred to the majority and became finally a great advocate of the "American system," second only to Clay. This change did not necessitate a change of political theory.



DANIEL WEBSTER

Extent of change. The change of conditions appertaining to a rapidly growing nation modified Webster's views of the tariff as a political measure, but did not modify his interpretation of the Constitution. However, he consistently held that a tariff for the sake of protection only, with no reference to revenue, was not warranted by the Constitution. In this respect he did not go to the extent of Hamilton's theory, which would justify the tariff upon the ground of the general welfare clause of the Constitution. While Webster stopped short of the extreme limit of Hamiltonian interpretation, Calhoun went beyond the Jeffersonian interpretation, so that the difference between Webster and Calhoun measured about the same as that between Hamilton and Jefferson. If it can be asserted that Calhoun had a passion for local self-government which extended to State Sovereignty, it can also be said that

Webster had a passion for Union equivalent to constitutional supremacy.

Influence of New England upon him. The mind naturally seeks the causes of things. It is interesting to ascertain the reasons for specific facts when they stand in contrast. Why did Webster embrace the broad construction theory? The atmosphere in which he was bred was surcharged with Federalism. In the early days most of the respectability, wealth and talent were found in the ranks of the Federalists. They had taken their name (which is a misnomer, they should have been called Nationalists) from their valiant attachment to the new Constitution. Ebenezer Webster, the father of Daniel, was a Federalist of the Federalists. He had placed into the hands of his son at the early age of eight a handkerchief upon which was printed in full the Constitution of the United States. The devotion of the New England home to an early introduction to fundamental principles may explain the passionate devotion of this son for the instrument, which in the minds of many a citizen was the cure-all of the numerous evils during the years immediately following the War for Independence. In this home religion took first place, patriotism second. The Bible was in the hands of the boy first, then the Constitution.

Source of his theory. While in college his mental activity was aroused by the discussion of the questions of the day. This period of life was spent during great political excitement. Born at the close of the war, the year before the treaty of Paris was signed, his minority was passed in a time of great concern for the welfare of the new government. The character of his mind was constructive, rather than destructive. Its tendency was positive, not negative. This talent, assisted by his college training, eminently fitted him for the advocate. The New England town meeting furnished him the arena for the exercise of his talents. Much was made over the youth who gave promise. In that section of the country grave discussions upon various questions were the order of the

day. The pulpit was the important school, and the preacher the real teacher. Public occasions where the great man was exhibited were numerous. Upon such an occasion Webster was introduced to his countrymen. From an early age his study took him to the history of his country. All his public addresses drew from this source. Soon the Constitution became his text; the Union, his theme; the great men of his country, his inspiration. Later, the Supreme Court of the United States became his school, with John Marshall his teacher, and the "Federalist" his chief text-book.

Webster in the Supreme Court. His first important case in the Supreme Court, which was argued soon after he entered Congress was between citizens of the same State holding property in different States, and involved a constitutional question of jurisdiction of the court. He took the broad construction view and ably contended that the Constitution extended jurisdiction of the court to citizens, not only of the original States to the compact, but to the citizens of all the States admitted to the Union. His argument in this case serves as a key to his interpretation of the document later in life.

The Dartmouth College case. In 1818 he achieved wide fame by his masterful argument in the Dartmouth College case. For our purpose it is only necessary to say that this case grew out of a law enacted by the legislature of New Hampshire which changed the charter of Dartmouth College without consulting the trustees under the charter. The trustees entered court in behalf of the charter as it was before the modification. The issue turned upon the constitutionality of the law under which the change was made. The court sustained the law. From the highest court in the State the case was taken to the Supreme Court of the United States. Webster appeared for the trustees to argue the unconstitutionality of the law. His contention was that a charter is a contract, and creates contractual relations from which obli-

gations arise; that the law of the State changed the contract; it transferred the government of the institution from the trustees provided by the will, to the executive of the State and thereby changed the obligation which rendered it unconstitutional. The decision pronounced by Marshall was in line with the argument of Webster. This ruling has been regarded as one of the most important in the history of the Supreme Court. Up to 1901 it had been cited nine hundred and seventy times.

Story on Webster. Judge Story has left the most graphic account of Webster's part in it. Among other things the judge said, "Few cases are better known to the public; few are of more varied and genuine application; few at the time attracted more intense attention, and probably few will retain so long as law continues to be a science, a more permanent and enduring celebrity." He adds, "The argument was decisive of the future professional reputation of Webster. It elevated him at once to first rank, and to the foremost competitors in that rank."

Other questions. In this same year Webster made a famous argument in the McCulloch versus Maryland case, before mentioned in this volume. In this exposition he foreshadowed his argument in his reply to Hayne a dozen years later.

In 1824 the case of Gibbons against Ogden was argued in the Supreme Court by Webster. It involved the interstate commerce power of Congress. It grew out of a law enacted by the State of New York, creating a monopoly of the steam navigation of certain rivers, the Hudson being among them. The question before the Court was whether the law was constitutional in view of the fact that the Constitution grants to Congress the power of regulating commerce with foreign nations and also between the States. Webster contended that a monopoly such as this was in contravention of such a right in Congress, and although Congress had not at the time

legislated upon the specific point, still the State had no authority to usurp the power of the government. The decision was handed down by Marshall and followed closely the reasoning of Webster.

In 1827 he argued the case of Ogden against Saunders, which involved the question of the power of a State to enact a law to relieve a debtor from his obligation. The next year he argued the case of the American Insurance Company against Canter, which involved the power of Congress over a Territory. In this argument he contended that Congress was supreme in the Territory up to the time of admission. This case was far-reaching because of the troublesome form that the slavery agitation was soon to take. It is also the decision upon which the later Insular cases (1898) were decided.

His preparation. From 1815 to 1828 Mr. Webster had been in cases which involved the relation of the States to the general government, in all of which he had taken the broad construction view of the Constitution, and had been a close observer of the opinions of the great chief justice. He replied to Senator Hayne. He was producing an argument which had been given in piecemeal before the Supreme Court at various times. When he was asked how long he had been preparing his speech, his answer that he had been twenty years in preparation was literally true.

The Foote resolution. It was on the 29th of December, 1829, that Senator Foote of Connecticut introduced a resolution instituting an inquiry upon the public lands, to ascertain the amount in each State, to determine the expediency of discontinuing further sales, and the abolition of certain land offices. It was considered by members of the Senate, chief of whom was Senator Hayne of South Carolina. Just after he had risen to speak, Webster came into the Senate chamber. He listened with marked interest to the speaker, who in the course of the address censured New England for a policy of antagonism against the West and South.

Hayne and Webster in debate. On the following day Webster replied in an able defense of his section, and argued briefly the constitutional phase of the question. This reply called out the best in his antagonist, who set forth his theory in three propositions: that the Constitution is a compact between the States; that a compact between two with authority reserved to one to interpret its terms would be a surrender to that one of all power whatever; therefore the general government does not possess the authority to construe its own powers.

Webster's Reply to Hayne. To the first proposition Webster raised the question, How the United States as a nation would be a party to the compact if the Constitution was a compact between the States? He held that such a position would make the government a creature of the compact and at the same time a party to it. In rebuttal he held that the government was the agent of the people, not of the States, and as such agent it was subject to the control of the people. "It is, sir, the people's Constitution, the people's government, made for the people, made by the people, and answerable to the people. The people of the United States have declared this Constitution to be the supreme law of the land." He admitted that the States were sovereign in a limited degree, but denied that the government could be restrained in the exercise of its functions by them. He asserted, "The people brought it into existence, established it, and have hitherto supported it, for the very purpose, among others, of imposing certain salutary restraints on State Sovereignty." He emphasized the distinction between a government of States and a government of the people.

The people's safety. The safety of the people was amply provided for in many and specific ways:

1. By interpreting the instrument and the laws made in its pursuance from the plain wording employed in the documents.

2. By providing short terms of office, frequent elections, and quick return of responsibility to the people.

3. By relying upon an independent Judiciary.

4. By the provision for the amendment of the Constitution.

5. By never leaving the interpretation to any State legislature, much less permitting any interposition by a State that thought itself aggrieved.

Webster on constitutional law. Mr. Webster agreed with his antagonist that no State was bound by an unconstitutional law, but differed from him as to who was judge of its constitutionality. He held, and rightly, too, that all laws were constitutional until declared not so by the proper tribunal. This proper tribunal was the Supreme Court of the United States, and could not be the State in any case.

Estimate of his reply. The effort, measured by the standard of oratory, is the high water mark of Webster. While he did not regard it his greatest popular effort (his Plymouth oration is that), public opinion believes he never reached that eminence before or since. While it is inferior in logical arrangement to many of his speeches, in popular influence it is unsurpassed by anything ever produced in our history. It had the effect of an amendment to the Constitution. It is true it did not silence the great exponent of nullification, for Calhoun was not to be silenced by oratory; yet it is true that it turned the current that was rapidly approaching State Sovereignty away from that channel toward national supremacy. However popular the doctrines of South Carolina had been, they had never been regarded in a serious light by the whole nation until the day that Webster made his masterful exposition of the Constitution. The patriotic fervor wrapped up in the words, the sublime sentiment running throughout the whole speech, and the thrilling peroration adapted the speech to the youth in school who were beginning to take interest in matters of public concern. Perhaps few speeches in the language were

read with the enthusiasm that portions of this speech were read in the years preceding and following the war.

His real title. From this time forth Webster's best talents were devoted to the cause of national union. Consensus of opinion conferred upon him the title of Defender of the Constitution, of which title he was proud. Upon his return to Washington he was prepared to accept the gauge of battle thrown down by the Nullificationists. Senator Hayne had given place in that chamber to Calhoun, the head and front of the South Carolina theory, and his entrance was evidence of a stormy session.

Webster against Calhoun. These two men were destined to come into conflict before long. No two gladiators were ever better prepared for the ring. The occasion was the debate upon the Force bill. Calhoun opened his speech on the 15th day of February, 1832, and closed it the following day. He covered the entire field in a masterly presentation. The effort was the climax upon a grave issue by the greatest exponent of one side of the issue. As soon as he ended Webster arose to reply. This speech did not appeal to the popular mind as did the reply to Hayne, but as an exposition of the Constitution it is greatly superior. It does not contain the rounded periods nor the rhetorical flourish, nor does it glow with the patriotic fervor that marked the previous effort, but its logic is all but invincible, its argument is convincing, and its conclusions cannot be escaped. As a constitutional exposition it is at once comprehensive and brilliant.

Comparative strength. The character of this reply was determined by the character of the onset. His great antagonist, unlike the brilliant Hayne, resorted to no arts, but depended upon the force of cold decisive logic. His critic charges him with a degree of sophistry purposely designed to strengthen a cause naturally weak. This criticism involves insincerity on the part of the theorist not justified in fact. The appearance of any ground for the charge is due to the metaphysical

quality of the mind of the great Nullifier, which led him into a realm dangerously bordering upon the sophist. This appears, not in the statement of his propositions, but in the argument of them. His statements were free from all ambiguity and were intelligible to the high and the low. Their arrangement was in that sequence, that the admission of one compelled the admission of the others. This freedom of ambiguity rendered a sharp issue between the combatants. It permitted the affirmation on the one side and a direct denial on the other.

Calhoun's resolutions. Calhoun submitted his propositions as follows:

1. Resolved, That the people of the several States composing these United States are united as parties to a constitutional compact, to which the people of each State acceded as a separate and sovereign community, each binding itself, by its own particular ratification; and that the Union, of which the said compact is the bond, is a union *between the States* ratifying the same.

2. Resolved, That the people of the several States, thus united by a constitutional compact, in forming that instrument, in creating a general government to carry into effect the object for which it was formed, delegated to that government for that purpose certain definite powers, to be exercised jointly, reserving at the same time, each State to itself, the residuary mass of powers to be exercised by its own separate government; and whenever the general government assumes the exercise of powers not delegated by this compact, its acts are unauthorized, void, and of no effect; and the said government is not made the final judge of the powers delegated to it, since that would make its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among sovereign parties, without any common judge, each has an equal right to judge for itself, as well of the infraction as of the mode and measure of redress.

3. Resolved, That the assertions that the people of these United States taken collectively as individuals, are now, or ever have been, united on the principle of the social compact, and, as such, are now formed into one nation or people; or that they have ever been so united in any one stage of their political existence; or that the people of the several States comprising the Union have not, as members thereof, retained their sovereignty; or that the allegiance of their citizens has been transferred to the general government or that they have parted with the right

of punishing treason through their respective State governments; or that they have not the right of judging, in the last resort, as to the extent of the powers reserved, and, of consequence of those delegated, are not only without foundation in truth, but are contrary to the most certain and plain historical facts, and the clearest deductions of reason; and that all exercise of power on the part of the general government, or any of its departments, deriving authority from such erroneous assumptions, must of necessity be unconstitutional; must tend directly and inevitably to subvert the sovereignty of the States, to destroy the Federal character of the Union, and to rear on its ruins a consolidated government without constitutional check or limitation and which must necessarily terminate in the loss of liberty itself.

Webster's reply. Webster's propositions in answer were as follows:

1. That the Constitution of the United States is not a league, confederacy, or compact between the people of the several States in their sovereign capacities; but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals.

2. That no State authority had power to dissolve these relations; that nothing can dissolve them but revolution; and that consequently there can be no such thing as Secession without revolution.

3. That there is a supreme law, consisting of the Constitution of the United States, and acts of Congress passed in pursuance of it, and treaties; and that, in cases not capable of assuming the character of a suit in law or equity, Congress must judge of, and finally interpret this supreme law so often as it has occasion to pass acts of legislation; and in cases capable of assuming, and actually assuming, the character of a suit, the Supreme Court of the United States is the final interpreter.

4. That an attempt by a State to abrogate, annul, or nullify an act of Congress, or to arrest its operation within her limits, on the ground that, in her opinion, such law is unconstitutional, is a direct usurpation on the just powers of the general government, and on the equal rights of other States; a plain violation of the Constitution, and a proceeding essentially revolutionary in its character and tendency.

Webster and Jackson. Mr. Webster's position was not only a defense of the Constitution, but it was a heroic defense of President Jackson's policy against nullification, for which the President was duly grateful, and for which ready acknowl-

edgment was made. The same devotion to the Constitution which stimulated this effort, compelled him, he thought, to oppose the Administration upon most of its measures. The removal of the deposits from the United States Bank was regarded by him as an unconstitutional act. Likewise the theory upon which the President vetoed the Bank bill was a dangerous interpretation. The President asserted, that "some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people." Mr. Webster rightly declared the duty of the President to be to enforce the law, not to interpret it. That function belonged to the Judiciary. He feared unwarranted power in the Executive no less than unwarranted privilege in the States. From this time down to his death one note rang clear — the preservation of the Union under the Constitution — to which he ever reverted.

Webster on slavery — 1820. This will help to explain his apparent inconsistency on the slave issue. He had consistently opposed this institution. As far back as 1820, in the address at Plymouth, he delivered a powerful indictment against the system.

In 1830–1836. Ten years later he praised the Ordinance of 1787 for excluding slavery from the Northwest. He regarded "domestic slavery as one of the greatest evils, both moral and political."

On Texas. In 1845 he opposed the annexation of Texas on various grounds, one of which was the advantage the State would have in its representation if slavery were permitted. He held the State should either drop slavery or come in on an equality of representation.

Slavery in the Territories. In 1848 on the question of erecting a territorial government for Oregon Webster took a leading part. He contended that the Fathers did not intend that slavery should extend to new lands, when they framed the

Constitution. Yet five slave States had been admitted from territory acquired since the adoption of the Constitution, and not a single one had come in from the North. He declared that he would not consent to the extension of the area of slavery upon the continent, but reasserted his judgment that Congress had no power to interfere with it in the States where it then existed.

His position in 1850. In view of this unfriendliness to slavery, what rational explanation of his Seventh of March speech can be made? The public opinion explains it upon the ground of his ambition to become President of the United States. It is charged that, in 1850, in the hope of winning votes from the slave States, he faced about on the slavery question.

The Seventh of March speech. An examination of this speech will explain much of the feeling of resentment in his former admirers. In the first place he attacked the Abolitionists and charged them with unwise and wicked agitation. He declared that the agitation had bound the limbs of the slave the tighter and had increased the rigidity of law against him.

He then enumerated specific grounds upon which the South had a right to complain:

1. The North resisted the execution of the fugitive clause. This it had no right to do, since it was a law of the whole land and was justified by the Constitution.

2. Many States had adopted resolutions asking Congress not only to abolish slavery in the District of Columbia, but in the States. He declared Congress had no power to interfere with that institution in the States.

3. The violence of the press was no more a cause for Southern, than Northern, complaint. However, it was a source of disturbance.

Offensive doctrine. He said that slavery in any and all the States was exempt from interference from Congress. This was in consonance with his views from the first. The Territories

over which Congress had power were divided into two sections; those in the Northern section which came from the Louisiana acquisition and the Oregon Territory, and those in the Southern which came from the Mexican cessions. The Missouri Compromise fixed the status of the Northern section, and the character of the soil fixed that of the Southern section. He contended that slavery could not exist in the country of the cactus and the sage bush, and he would not consent "to re-enact the laws of the Almighty."

Was he consistent? His position of opposition to the North in its attempt to evade the Fugitive Slave Law, which was as much law as any other statute, was in consonance with his entire career. His position upon the status of the slave in the States was in 1850 what it had always been, and had often been publicly expressed and known to all. But his attitude upon the status of the slave in the Territory is open to criticism of judgment, at least, if not of motive. According to his oft-repeated argument, Congress could do with the Territories as it liked, therefore slavery was not necessarily excluded.

To those who held the abolition of slavery paramount to the preservation of the Union, this speech reached the depths. But to those who believed, as Webster did, that the perpetuity of the American government, was the supreme end, it touched the heights.

The two theories distinguished. Calhoun held the Constitution a compact between the States; Webster regarded it the fundamental law of the people.

2. Calhoun held the government as the agent of the States; Webster held it the agent of the people.

3. Calhoun regarded the Union made up of States in communities; Webster regarded it a union of the people of the States.

4. Calhoun made the State the judge of the constitutionality of a law as it applied to the State; Webster made the Supreme Court the judge.

5. Calhoun held that the primary fealty of the citizen was due the State; Webster held it was due the nation.

6. Calhoun declared that nullification was a constitutional remedy; Webster declared it revolution.

7. Calhoun held the States sovereign and therefore possessed of the right of State veto; Webster held the Constitution, the laws made in pursuance of it, and the treaties to be the supreme law of the land.

At the close of the careers of these representatives of two antagonistic political theories so long in conflict, ominous signs suggested the probability that the contest would soon be transferred from the forum to the field.

CHAPTER XII

THIRD PARTIES

The radical against the conservative. The rational differentiation of political parties lies in the constitution of the mind. Whether man is naturally controversial or not, he ever insists upon the recognition of his rights. In political affairs he differs most frequently from his fellow upon method, rather than matter. The conservative, who dislikes agitation for its own sake, is ever present. He chooses to suffer evils rather than risk the institutions in the attempt to correct them. Not far from him usually stands the radical, who enjoys agitation and who has a propensity for righting wrongs at any price. He is uncompromising in his judgments, specific in his methods, and insistent upon the accomplishment of his purposes at whatever cost. He dislikes uniformity, as the conservative fears innovation. The radical enjoys change while the conservative would let well-enough alone. One would infer from history that the conservative has had his influence. The Declaration of Independence asserts that, "All experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." In a system of government where opinion is untrammeled, these two characteristics are the rational bases upon which political parties divide. Where there are two controlling parties, one of them will be radical and the other conservative. This division is not consistent, since it most frequently occurs that the radical

to-day may become the conservative to-morrow, and vice versa. It may be affirmed with a degree of accuracy that the party out of power is the radical, but becomes conservative when placed in power.

Third parties. Third parties are the expression of the radical opinions of men who are dissatisfied with the existing régime. They grow out of impatience over the indifference of party leaders to redress evils. They arise from the conviction that the needed reform will not be achieved by the old parties.

The "Quids." The first third party movement was that of the "Quids" in 1805. It was a revulsion from the old Republican party, led by John Randolph of Virginia in opposition to the administration of Jefferson and his attempt to dictate his successor. The Quids nominated for President James Monroe upon the ground that the Republicans under the leadership of Jefferson and Madison had abandoned the fundamental principles of the party and had become centralized by a policy of national encroachment upon the rights of the States. Because of the indifference of Monroe toward the nomination and the election of Madison, the *quid tertium* agitation scarcely reached the dignity of a third party movement.

First third party. The first real third party movement was that of anti-Masonry in 1827. The real grounds for this party's action were opposition to secret orders. From mere local agitation it spread to the nation. Its real political effect was State rather than national.

In New York the movement had taken hold of many prominent men of the churches and newspapers. Of two hundred and eleven publications, thirty-two were openly supporting the Anti-Masons.

In Pennsylvania it found fertile soil. The religious elements here, Scotch-Irish, Quakers, German Baptists, Moravians and other sects, were quite generally in opposition to the Masons,

and joined in the movement against them. In the election in 1832 the Anti-Masons of Pennsylvania polled 88,000 votes to 91,000 by the Democrats and elected eight members to Congress, and eleven members two years later.

In Vermont. In this State it boasted a newspaper. Its influence in the legislature was strong enough to repeal the charter of the Grand Lodge. By 1831 the Anti-Masons controlled the National Republican nominations and elected the governor. The electoral vote of this State in 1832 was cast for the Anti-Masonic candidate.

Other States. In Massachusetts the Anti-Masons cast 2,000 more votes in 1831 than were cast by the Democrats. In 1833 they nominated John Quincy Adams for governor; who received 3,000 more votes than the Democratic candidate. By 1835 the party was overthrown by the Whigs. In Ohio a like fate awaited it. The Anti-Masonic party is rightfully regarded as an episode in our political history. It conducted one national campaign and caused considerable stir in some of the States. It continued less than a decade, yet it gave to our history one institution, the delegate convention for the nomination of officers. Its first and only convention was held in 1831, and every party since that day has employed that system for placing before the people its candidates.

Labor party. Between the years 1820 and 1840 much agitation existed in labor circles throughout the country, especially in the cities of New York, Philadelphia and Boston. In 1828 the agitation took a political coloring and a workingman's party was formed which nominated candidates for city and county offices in New York and other parts of the country. The party demanded shorter hours, and defined a day's work from sun to sun, or ten hours. It also declared against convict labor, imprisonment for debt, and the banking institutions. It pronounced in favor of the mechanics' lien, and a tax upon church property. The Workingman's ticket the first year received 6,000 votes. In 1830 it held a State convention in

New York in which thirteen counties were represented. The convention recommended the nomination of State officers but later it endorsed the Anti-Masonic candidates.

"Locofocos." — In 1834–1835 the Workingman's party was absorbed by what was then known as the Equal Rights party. This organization was a split from the Democratic party. It named candidates for State offices which were ratified by Tammany Hall. It gained much power in the State and attempted to control the general assembly, which resulted in a double organization and a serious disruption. It was in this conflict that the old line leaders extinguished the lights in the hall when the Equal Rights party lit them again with locofoco matches. The name Locofocos was applied to them thereafter as a party. In 1836 a State convention was held which proclaimed their principles. They were extremely democratic, and antagonistic to the centralizing tendencies of the Jackson administration. To the end that their influence might check those tendencies, they made a coalition with the Whigs, which soon ended. Owing to Van Buren's position upon the Bank issue the Workingman's party supported Van Buren in 1836. This coalition was a natural one and the party lost its identity in the absorption by the party from which it sprang. Its only effect upon national politics was to call back the New York Democracy to its fundamental principle, the equal rights of all.

American party. It is but natural that about 1830, the great flood of immigration, which was setting in from Catholic countries, should arouse some alarm among the Protestant elements of the cities where the major portion of the immigrants settled. The poverty of the immigrant, the low state of living, his standard of morals, and his great numbers, created a spirit of bitterness toward him. It took on a social, rather than a political phase. The tendency of this portion of the population to segregate in colonies in certain quarters of the city — which in one sense was looked upon with favor by the residents of the city, but in another was regarded

as an element of danger — made them the object of distrust and hatred. In colonies they could be and were handled as a unit for political purposes by political manipulators. Opposition became so strong that riots resulted in many places. It was charged that the Catholic element refused to become assimilated but retained allegiance to a foreign power, the Pope. In Baltimore this agitation was largely confined to the lower strata of the population.

Its principles — affiliations. Soon various crusades were started against the Catholics. Numerous anti-popery meetings were held. One of the meetings, held in 1835 in New York, was broken up by Catholics. This stimulated the opposition to the extent of making it a campaign issue and a ticket was placed in the field. In June, 1835, the party organized itself into a national body, taking for its name the National Democratic Organization. It announced its principles to be

1. America for Americans.
2. Anti-Catholicism.
3. Regulation of Immigration.

The school question. The movement failed to interest the electorate generally. The leaders fused with the Whigs, and by 1837 the movement had lost its identity for the time. However, it was revived three years later by the agitation of the Catholics over the school question. The system of general taxation for the support of the system of general education, places its burdens upon all alike. There was objection to the system on the part of those who preferred to educate their children either in private or parochial institution. The question came before the State of New York, and Governor Seward called attention to the matter in his message. The matter of placing the Bible in the schools as a text-book was a delicate question which Seward refused to recommend but he agreed to a division of the school funds, the control of which was in the hands of the Protestants. It was regarded by him as equitable that the Catholics should have apportioned

to them their share of the funds. This policy was the signal for the most intense excitement and the most bitter class hatred. In 1843 the Catholics succeeded in placing upon the Democratic ticket members of their Church. This incident was the occasion for the organization of a new party under the name of the American Republican party. It declared for an amendment to the naturalization laws, requiring residence of twenty-one years for naturalization; for a repeal of the school laws and against all foreigners being placed in office. Membership in any other party was declared a disqualification for holding office in the American Republican party. In the election, it cast about twenty-five per cent of the vote.

Its first national convention. The next year this new party succeeded in carrying the State ticket, and secured four members in the national House of Representatives. By this time it had appeared in all the Northern States and controlled in each a considerable following. The first national convention of the American party met in Philadelphia, July 4, 1845. Fourteen States were represented by one hundred and forty-one delegates. Owing to the convention being held after the presidential election of 1844, it decided not to name at that time a candidate. It here took the name of Native American party. Another convention was held in May, 1847, at Pittsburg, but adjourned to meet in Philadelphia the following September. This convention recommended Zachary Taylor for President and Henry Dearborn for Vice-President. At this time it had six members in Congress, four from New York and two from Philadelphia. In the next Congress it lost all its representatives, save one from Philadelphia. While it was largely an anti-Democratic movement, it affiliated with that party in places where it was in the minority. Doubtless Clay's defeat in 1844 was due to the influence of this party. In the next campaign it favored the Whig party which absorbed it. Nothing is heard of the party again until the Fremont campaign in 1856.

Whig disintegration. The success of the Whigs in 1848, and their failure to satisfy any portion of the people upon the slavery issue, encompassed its disastrous defeat in 1852, foretelling its speedy disruption as a party. Its candidate, General Scott, received but forty-two electoral votes, against two hundred and fifty-four for his Democratic opponent, Franklin Pierce. The unmistakable signs of dissolution were upon the Whig party now seeking a chance for escape.

The Know-nothing movement. In 1853 the anti-foreign sentiment organized into numerous secret orders throughout many States. The sentiment was not unlike that which created the agitation in 1835, and in 1843–1847. Its principles were identical with those announced in 1847, but with additional planks in its platform to cover the Whig position upon the slavery question. It was an American Protestant movement against the Irish Catholic influence in politics. The places of operation were in the great centers of population. From these it spread rapidly throughout the country districts until in certain localities it controlled the political situation. It intrenched itself in power in many States and won to its ranks leaders of national repute. The occasion of this phenomenal growth was the sad plight of the Whigs. The Free-soil movement was too radical to suit them; they could not affiliate with their lifelong enemy, the Democratic party, and the Republican party was not yet born. The anti-foreign movement offered an escape for them. The Southern elements, which were driven from their own party by the attitude of the Northern Whigs, found an easy escape to the American party. The Northern element, which failed to win upon their policy of compromise, also found an easy escape through the same channel.

Its first national convention. In 1856 the first national convention of this new movement met in Philadelphia with most of the States represented. After a stormy session of three days, caused by the attempt to frame a platform so as to win

all disgruntled elements, it nominated Millard Fillmore for President and A. J. Donelson for Vice-President. These candidates were endorsed by the Whig convention which met the following September, thus fusing the two parties. In the following election the two parties together polled but 874,534 votes and won the electoral vote of but one State — Maryland. Thus after a phenomenal success in many State elections, the national effort was so pitiably weak that the identity of both the American and the Whig parties was lost. In the following campaign of 1860 the scattered remnants were gathered up, and an attempt was made to organize them into what was known as the Constitutional Union party. This latter party drew more from the Democrats than any of its predecessors. It succeeded in obtaining the electoral votes of three States - Virginia, Tennessee and Kentucky — all Southern States, and, upon the issue in 1860, Democratic.

Rise of the Liberty party. The Liberty Party owes its rise largely to the influence of the American Anti-Slavery Society which was organized in 1833. The anti-slavery movement appealed to specific elements in our national life. It also enlisted valuable support from the women of the country. In the beginning the movement had no political meaning, being confined to the social sphere. Then it extended to the churches and took on a religious phase and later it took up the discussion of its political duty. Three questions were discussed:

1. Should the members of the society take part in elections?
2. Should women participate, and to what extent?
3. Should a separate party be formed?

Form of the agitation. There were sharp divisions of sentiment upon all these questions. The West was radical and insisted upon political action. By 1834 petitions from that section came pouring into Congress, urging action on the subject of slavery. The agitation reached the colleges and seminaries. The Lane Seminary in Cincinnati attempted to

check the growth of the agitation and enacted repressive regulations, which caused an exodus of students to Oberlin College which was well known for its anti-slavery views. The newspapers were a splendid field for operations and the editor became an important factor. Garrison, Lundy, Birney and Lovejoy were all valiant defenders in this field of anti-slavery agitation. The first named insisted that the movement must remain outside of politics.

Its growth. Garrison marshaled his influence to keep clear of politics, but the political faction secured control and the organization of the Liberty party was the result. James G. Birney was its first candidate, receiving 7,069 votes in the contest in 1840. From that date the party grew in strength and in 1844 the same candidate received 62,300 votes. By 1848, for various reasons, it had dropped the name of Liberty, and had taken that of Free-soil. This year it nominated Van Buren who received 291,263 votes. In 1852 its vote dropped down to 155,825. In four years more it dropped out altogether, and joined with all other parties opposed to the extension of slavery into the Territories, in the formation of the Republican party. The Republican party nominated John C. Fremont in 1856, and he received 1,341,264 votes. The party carried eleven States and came within a few thousand votes of electing the President. Four years later it carried every Northern State in the Union, electing Abraham Lincoln President. This party continued in control of the government from 1860 to 1884, when it was superseded by the Democratic party for four years. Then from 1888 to 1892 it again held control, when it was again superseded by the Democratic party for four years. Then in 1896 the Republican party again took control and has held it continuously up to the present time (1910).

The rise of the Prohibition party. The Prohibition party held its first national convention in September, 1869. It was not called for the purpose of nominating a candidate for office,

but to inaugurate a national temperance movement. From the time when two hundred farmers in Litchfield county, Connecticut, organized a temperance society, in 1789, the question of the use of intoxicating liquors has more or less agitated the people of the country. Between 1810 and 1840 similar organizations were formed. The first public temperance society in this country was organized in 1826. The total abstinence idea was not incorporated as essential to membership in it. The use of beverages was so common among all classes of our people that a total abstinence pledge would have been looked upon as fanaticism. However, ten years later, a national convention of temperance workers was held at Saratoga, New York, which declared for total abstinence. The adherents were ridiculed and derisively nicknamed "Teetotalers." Four years later the Washington Society was started by a half dozen men pledging themselves to totally abstain from the use of intoxicants. By the end of the year at least one thousand such men marched in procession celebrating the organization of their society, one year old. From the advanced position of total abstinence, it was but a step to the prohibition of the manufacture and sale of intoxicants. This agitation in the State of Maine culminated in 1851 in the enactment of a law prohibiting the manufacture and sale of intoxicating liquors as a beverage. This was the first enactment of its kind in the country. But the agitation grew with such rapidity that within five years similar laws were passed in Rhode Island, Massachusetts, Vermont, Michigan, Iowa and Connecticut. In most of the cases the effect was only temporary.

The first national convention. The idea of prohibition gave way in most cases to that of regulation of the traffic. This was accomplished either by a tax levied upon the business or by a license for which a considerable fee was charged. The regulation theory was based upon the idea that by increasing, the burdens of the business its profits would be lessened and

therefore its evils would be reduced in proportion. This view was offensive to the temperance reformer, as the compromise with slavery was offensive to the Abolitionist. In 1869 the first national convention was held in Chicago when the National Prohibition party was organized. The call for the convention originated with the Right Worthy Grand Lodge of Good Templars, in its session at Oswego, New York, in May, 1869. The first national nominating convention of the Prohibition party was held three years later, in Columbus, Ohio. Nine States were represented by 194 delegates. As is the custom of third parties, the platform adopted, while it was a distinctively prohibition pronouncement, covered various issues. It was democratic in sentiment. It declared in favor of suffrage without regard to sex, a sound currency, nominal charges for public service, regulation of railroad and telegraph rates, and for wise regulation of immigration. It pronounced against monopoly, class legislation, discrimination between labor and capital, and corruption in public life. It nominated James Black of Pennsylvania for President, and John Russell of Michigan for Vice-President. The party polled 5,608 votes in the election.

Its progress — 1869–1884. The organization was continued, and four years later, Green Clay Smith, the candidate for President, received 9,522 votes. In 1876 an unsuccessful effort was made in the national House of Representatives to recommend an amendment to the Federal Constitution to prohibit the manufacture and sale of intoxicants after the year 1900. In 1880 the eminent temperance apostle, Neal Dow, of Maine, was chosen at the Cleveland convention as the standard-bearer upon a platform similar to that of 1876. This year the party cast 10,305 votes. In 1884 there were two conventions, both claiming to be of the Prohibition party. The first was held in Chicago in June under the name of American Prohibition National Convention. Its platform was a patch quilt. The first three resolutions were similar

to the principles of the old American party. The fourth was a brief statement of its prohibition principle. The fifth was a demand for the withdrawal of the charters of all secret societies, and was therefore similar to the old Anti-Masonic party. The sixth, eleventh, and fifteenth were socialistic in character. The ninth and twelfth were Republican, while the thirteenth and fourteenth were Democratic, in sentiment. The convention nominated S. C. Pomeroy of Kansas for President. Before the campaign was fairly opened the effort to secure votes was abandoned.

From 1884 to 1900. The other convention was held at Pittsburg in July under the name of the Prohibition Home Protection party. It nominated John P. St. John of Kansas for President, and William Daniel of Maryland for Vice-President. The platform was comprehensive but strictly a prohibition pronouncement. It denounced both the old parties for their position upon the liquor question. Its attitude in this respect won votes from both the leading parties, and especially from the Republican party in New York, where the Mugwump element was operating. The result of the election showed a poll of 150,369. Four years later, 1888, the party nominated Clinton B. Fisk of New Jersey for President, and John A. Brooks of Missouri for Vice-President, upon a platform similar to that of 1884. The party polled 249,586 votes, a handsome gain. In 1892 the candidate, John Bidwell, received 255,841 votes. In 1896 the party divided upon the money question into the Narrow-gaugers, and the Broad-gaugers. The former desired to limit its fight to the main issue for which the party was organized, while the latter insisted upon making its fight include the money question in the interest of the free coinage of silver. The disruption came in the fight for the adoption of the platform, which ended in a victory for the Narrow-gaugers, after which the Broad-gaugers withdrew. The Narrow-gaugers nominated Joshua Levering of Maryland for President. In the election he received 131,317 votes.

The Broad-gaugers met the following day and nominated Charles E. Bentley of Nebraska for President upon a free-coinage platform. He received 13,968 votes. This disruption natural to all third-party movements is the fate which awaits such efforts. It is the result of rivalry between ambitious men with comparatively small following who strive for leadership with but little or no experience in the management of great campaigns.

Since 1900. In 1900 its candidate, John G. Woolley received 208,791 votes, a gain over the campaign of 1896, but 47,000 votes less than were received eight years before, and 40,000 less than twelve years before. In 1904 its candidate for President, Silas C. Swallow, received 260,303 votes and in 1908 the party cast but 241,282. It thus appears that the prohibition movement has failed thus far to enlist the temperance element of the country. In a third of a century its growth has been less than two per cent of the vote cast for all parties.

Origin of the Liberal Republican movement. The Liberal Republican agitation cannot be properly classed as a third party movement. It was but a revulsion of certain elements of the Republican party against specific tendencies of that party. It included in its ranks national figures, such as Horace Greeley, Charles Sumner, Carl Schurz, etc., and was backed by the New York *Tribune*, Cincinnati *Commercial*, Springfield (Mass.) *Republican* and other newspapers of less standing. With the death of Greeley the Liberal Republican faction ceased to exist. It was but a spasm of political enthusiasm of the negative character, and it passed away as quickly as it came.

The nearest approach to it was the Gold Democratic movement in 1896, a revolt from the Democratic party's tendency toward populistic principles of government. It was never a party, only a faction. Of about 14,000,000 votes it cast only 134,645 and, like the Liberal Republican faction, its members soon found their places in one or the other leading parties.

Rise of the greenback agitation. There are always present in the country a considerable number who believe in the "soft money" theory, to whom money may be anything that the government calls money. A piece of paper with the government's stamp upon it is money, as truly as the gold or silver coins with the government's stamp. The utility of such money has been tested in times of emergency. Its advocates refer to these periods as proof of their contention. These advocates are found in every country and at all times.

Soft money craze. In this country, as in others, the soft money theory is uniformly offered as the remedy for industrial stagnation. Whenever business is disturbed and hard times are promised, the soft money advocate is on hand with his stock of argument to prove that he has what the country needs. His position invariably appeals to the debtor class and wins its support. All nations have at one time or other passed through this stage.

In the colonies. In this country that stage was reached before the nation was born. The condition of the individual colonies prior to the Revolutionary War, resulting in economic anarchy, is known to all students of our history. This period was followed by the era of Continental currency, when it took two thousand dollars to buy a pair of shoes and four hundred dollars to purchase a pound of coffee. The worthlessness of the Continental money passed into the current phrase "It isn't worth a continental." After years of national discipline, induced by the craze for expanding the circulation — which was followed by the inauguration of the financial schemes of Hamilton, one feature of which was the establishment of a National Bank — the agitation for a greater circulation, for the limitation of the National Bank, and a substitution of the State Bank in its stead, returned.

Paper money a cure-all remedy. From the close of Jackson's administration to the Civil War, the country was battling against the demand for State Bank currency. The contention

that money value was representative, not intrinsic, induced the issuance of unlimited amounts of irredeemable paper notes in the form of bank bills. The situation was the soft money theory approaching its legitimate conclusions. The Civil War found the nation with specie in hiding, perhaps the most threatening obstacle in the way of the successful prosecution of the war specie. Without it, the government was left to employ again soft money. It resorted to the United States note, popularly known as the "greenback," which was made redeemable in gold on demand of the holder. These demand notes were limited to the ability of the government to redeem them. But subsequent issues were not of the redeemable class. The later issues were also legal-tenders in the payment of all debts, public and private, except duties upon imports and interest upon the public debt. The exceptions were wisely made, since the "greenback" was but a certificate of indebtedness. To accept it in payment of duties would be attempting to pay ourselves with certificates of our own debt.

In Civil War times. The immense issuance of these notes, during the Rebellion which was taxing the maximum energy of the nation produced a depreciation of value to the point where it commanded but thirty-seven cents on the dollar. With the close of the war, one of the first questions to claim the attention of the Administration was the redemption of this note. In other words, the government desired either to withdraw it entirely from circulation or else place it upon a value equal to specie. For years the agitation was kept up. The policy of withdrawal was unpopular. It was declared that it would contract the circulation. It was also urged that it was an inexpensive currency, in that it cost the government no interest. Then the agitation for the resumption of specie payment began; to stand ready to give specie in exchange for it, dollar for dollar. It was argued by the resumptionist that such a policy would supply the confidence in the government then lacking, and if the "greenback" were the popular money

claimed for it, the holder would value it equal to the specie, and would retain it. The opponents of resumption argue that it was for the purpose of the contraction of the currency in the interest of the money-changers; a conspiracy of the class against the mass.

Resumption of specie payment. When it was fairly known that resumption was soon to be an established policy of the government, fierce indignation was manifested in certain quarters. Naturally enough it was generally confined to the party out of power, which was then the Democratic party. This party had, in its history, famous hard-money leaders, and still possessed a predominant element against the soft-money craze. However, the soft-money element undertook to commit the party to its creed, but in vain. The first step toward a partizan organization was in November, 1874, when a Greenback convention met in Indianapolis and adopted a platform of principles. It resolved against the policy of resumption of specie payments. It demanded the withdrawal of all State and National Bank currency, and the substitution for it of a national paper currency issued directly by the national government to the holder. It desired to limit the payment of coin to the liquidation of the interest upon the public debt. The convention then adjourned to continue the agitation of the question. In 1876 its first and only nominating convention was held in Indianapolis, in which nineteen States were represented by two hundred and thirty-nine delegates. It here took the name of Independent party. It adopted a platform of five resolutions, embodying Greenback ideas, and nominated Peter Cooper for President. In the election he received 81,737 votes, mostly from the West. Indiana alone gave him 17,233 votes, and Iowa, Illinois, Michigan and Kansas, increased this to 53,523 votes.

Labor in politics. Co-existent with the greenback agitation, labor reform claimed attention in many States, especially in the large cities. This reform was not unlike the agitation

which had previously given rise to the Workingman's party in New York. In 1870 the Labor party placed Wendell Phillips before the people of Massachusetts as its candidate for governor. The following year a strenuous effort was made to commit the Republican party of that State to a labor issue. The agitation soon assumed a national phase. In 1872 in the city of Columbus, Ohio, the first national convention of the Labor Reformers was held. Seventeen States were represented by at least two hundred delegates. It set forth its principles in a platform of sixteen resolutions. Its resolution upon the money issue coincided with the views of the Greenback party. Upon the tariff issue it coincided with the Democratic party, demanding a tariff for revenue only. It pronounced against contract labor, Chinese immigration, and monopolies. It declared in favor of an eight-hour law, civil service reform, the speedy payment of the public debt, governmental supervision of railroads and telegraphs, and a general amnesty to the Confederate participants upon the basis of equality of rights and privileges to all. The names of some famous men were before the convention as candidates for the presidency, David Davis of Illinois, Wendell Phillips of Massachusetts, George W. Julian of Indiana, B. Gratz Brown of Missouri, Horace Greeley of New York, J. M. Palmer of Illinois, and others. Upon the third ballot Judge David Davis was nominated, having received two hundred and one of the two hundred and eleven votes cast in the convention. Judge Davis formally declined the nomination four months later. The party then placed Charles O'Connor of New York upon the ticket. He was nominated also by the straight-out-Democratic party, which resented the endorsement of Greeley. O'Connor polled but 29,489 votes in the election.

Natural alliance. The Greenback and Labor party leaders sought an alliance and a national convention was held in Toledo, Ohio, on the 22d of February, 1878. The platform adopted completed the alliance which proved popular in

certain quarters. It won fourteen seats in Congress. Two years later, the national nominating convention named James B. Weaver as the candidate of the party for President. He polled 308,578 votes which did not represent the full strength of the party. Four years later Benjamin F. Butler received but 175,390 votes. The falling off was due to the decadence of the Greenback element on account of the success of the resumption policy. The Labor element won some votes in the East, while the West reverted to the old parties.

Spasmodic movements. In 1886 the United Labor party was organized in New York. It made a phenomenal campaign for Henry George in the New York mayoralty contest upon a platform socialistic in character. This party held a convention in the same year in Syracuse, New York. Upon the socialistic tendencies a division arose, and the convention was disturbed by the withdrawal of many delegates who proceeded to organize a new Labor party under the name of the Progressive Labor party. The following year at Cincinnati, a Union Labor party was organized upon the principles of the Knights of Labor.

Socialistic tendencies. In 1888, in the same city, two conventions were held simultaneously, one by the Union Labor, and the other by the United Labor party. The Union Labor convention represented twenty States with two hundred and twenty delegates. It adopted a platform covering the questions of land, money, labor, pensions, transportation, and income tax. It declared against monopoly, trusts, contract labor and Chinese immigration; also in favor of woman suffrage and elections of President and United States senators by direct vote of the people. It nominated for President A. J. Streator, who received 146,935 votes. Kansas alone cast twenty-five per cent of this vote. The United Labor convention took a socialistic position and nominated Robert H. Cowdry for President. Only 150 votes were reported for him, all coming from Illinois.

Rise of the People's Party. In 1891, in Cincinnati, there was organized the People's party, composed of adherents of the principles upon which were built the Greenback party, the Union Labor party, the United Labor party, and the Farmers' Alliance. This new organization adopted a platform declaring for free coinage of silver, equal taxation, income tax, a revenue tariff, and the election of President, Vice-President, and United States senators by direct vote of the people. Its first national convention was held in Omaha, Nebraska, in 1892, when James B. Weaver was nominated for President, and James G. Field for Vice-President. The campaign which followed created much enthusiasm and won for the candidates 1,040,886 votes. The party carried the electoral votes of Colorado, Nevada, Idaho, and Kansas; and one vote in each of the States, North Dakota and Oregon — in all twenty-two electoral votes. It will be of interest to the student of politics to observe that the People's party is the only third party to control the electoral vote of any State since the Civil War, and that in one election only.

"Populism." In 1896 this party now popularly known as the Populist party, endorsed the candidacy of William J. Bryan and nominated Thomas Watson for Vice-President. This ticket won 222,583 votes which was not a representation of the strength of the party, since most if it went direct to the Democratic candidates. In 1900 the Populist party fused with the Democratic party. In 1904, it nominated Watson as its standard-bearer and conducted its campaign independent of the Democratic party. It cast but 114,637 votes, a little more than enough for one-half of an elector for President and Vice-President.

The Socialist in politics. The Socialist party should not at present be confused with the Socialist Labor party. The latter was organized in 1883 in the city of Baltimore. In the beginning it was purely a local matter, generally confined to the city. It did not assume a political phase until later. The

Progressive Labor party, and later the United Labor party, adopted principles similar to the Socialist Labor party. In 1892 the Socialist Labor convention was held at New York. Its representation indicated that it had hardly assumed a national significance. It nominated Simon Wing of New York for President, and Charles H. Matchett of Massachusetts for Vice-President. Its platform contained the usual pronouncements of Socialist advocates: the abolition of the presidency and the United States Senate, and the substitution of an Executive Board. Upon this platform the candidates received 21,532 votes. New York cast 17,956 of these.

Its partizan activity. On the 4th of July, 1896, the second national convention of this party was held in New York. Its platform was similar to that of the previous convention. Charles H. Matchett was nominated for President and received 36,373 votes, 17,667 of which came from New York. In 1900 the party's candidates received 39,944 votes, in 1904 but 33,453, and in 1908, but 15,421.

Woman's rights movement. The Woman's rights movement which in 1884, under the name of the party of Equal rights, nominated Belva Lockwood for President, does not deserve the rank of third party. The lack of a well-defined demand, even among women, has thus far precluded a strong party sentiment for woman suffrage.

Law of third parties. Of the less than a dozen third parties which have existed at one time or other in the life of the nation, not one lived to pass from the stage of third party to that of first, or even second, in national affairs. At least three of them reached first place in single States in presidential years. The real influence of these movements is confined to State elections, while in national matters they have exerted small weight.

Résumé. All told, the electoral vote cast by what is known as third parties is as follows:

1832, Anti-Masons cast 8 votes (Vermont) out of 286.

1856, the American cast 8 votes (Maryland) out of 308.

1860, the same party under the name of Constitutional Union party cast 39 votes (Virginia, Tennessee and Kentucky) out of 303.

1892, the Populist carried 22 votes (Kansas, Colorado, Nevada, and Idaho) out of 444 votes.

It will thus appear that the Anti-Masons cast less than three per cent of the electoral vote; the Americans less than two per cent in 1856, and a fraction over twelve per cent in 1860; and the Populist about five per cent in 1892.

Abolition party no exception. It would appear that the old Abolition party serves as an exception to the law of third party movements. It is looked upon as having passed from the stage of third party to that of first. This is not historically true. Starting as a social organization it passed into a political society, against the strenuous efforts of its greatest leader, William Lloyd Garrison. Its candidate reached his highest vote in 1844 when he polled 62,300 votes which was about two and one-half per cent of the total. When the Abolition party gave way to the Free-soil party which reached its high water mark in 1848, when Martin Van Buren received 291,263 votes, a fraction over ten per cent of the total. By the next presidential election in 1852 the Free-soil party had dropped to 155,825 votes, less than five per cent of the total vote. By the next election in 1856 the Free-soil party was absorbed by the Republican party which carried eleven Northern States with 114 electoral votes. Its popular vote was 1,341,264, which was thirty-three per cent of the total vote cast, while its electoral vote was a fraction over thirty-eight per cent.

Republican party not an exception. The Republican party was never a third party. In the first election in which it took part it reached the position of second party, and in the next it became first party. Neither the old Abolition nor the Free-soil party can be identified with the Republican party. While the latter took a position upon the slavery question, it refused

to endorse the radical views of either of the former upon that sensitive question until war was precipitated, and then not until abolition was demanded as a war measure. During the first two years of Republican administration, Lincoln had little support from the Free-soil element of the country.

Real value of the third party. The substantial influence of third party movements is not found in their prospect of becoming first or even second parties. It is found in their ability to control the balance of power. Until such movements can reach that position they are futile as political factors. In American politics the party system makes it possible for a small number to control this balance. It is due to the numerical equality of the leading parties, together with the electoral system employed in choosing the American executive.

Favorable conditions. The close vote of the two leading parties for the past half century has been a subject of interest. Whether from design or mere coincidence, in almost every national contest a very small vote would have reversed the verdict of the people: There is a well defined conviction among Americans that great majorities invite corruption; that narrow margins assist in clean politics. Whether from such conviction or not, it is difficult to say, yet it is true that in elections where millions engage in a heated contest, the results frequently show votes so close that but a few thousands would have changed the result.

Examples of narrow margin. In 1836 Van Buren received a popular majority of but 27,000 votes of a total of one and a half million, and an electoral plurality of but 23. A change of 2,000 votes in the State of Pennsylvania would have given the presidency to Harrison. In 1844 Polk fell short of a majority of the popular vote by 24,119. His plurality over Clay was but 38,181. His plurality of the electoral vote was 65. In New York his plurality over Clay was 5,106. Thus a change of 2,504 votes would have given the State's electoral vote to Clay, who would have been elected by a plurality of

seven votes in the electoral college. In the State of New York alone, the Abolitionists cast 15,812 votes. These were principally from the Whig party. Hence the oft-repeated charge that Clay owed his defeat to his enemies in the Abolition camp, who resented his compromise policy. There is little doubt that his defeat was encompassed by this third party movement. In this manner such movements can be effective.

In 1848. In 1848 General Taylor was elected by an electoral plurality of 36 votes. His popular plurality was but 139,555. He fell short of a popular majority by 75,855 votes. This year the Free-soilers cast 291,263 votes. In Pennsylvania alone they cast 11,263 votes. This State gave its 26 electoral votes to Taylor. A change in the State of 6,674 votes would have elected Cass over Taylor by an electoral plurality of 16 votes. Here the Free-soilers again as a third party held the balance of power.

In 1856. In the famous Fremont campaign of 1856 Buchanan received a plurality of the popular vote of 496,905, but he fell short of a majority by 188,815 votes. His majority in the electoral college was but 25 votes. He secured the Pennsylvania electors, 27 in all, by a majority of 512 votes. His plurality over Fremont in this State was 83,200. The third party cast in this state 82,175 votes. Had Pennsylvania gone to Fremont or Fillmore, Buchanan would have lacked two electoral votes of the required majority.

In 1860. In the election which resulted in the choice of Lincoln in 1860, Lincoln's plurality was 491,295, but he fell short of a majority by 473,645, of a total vote of 4,680,193. Of an electoral vote of 303 he received 180 which was a majority of 28. Here again is an interesting fact in our electoral system. Lincoln received 1,866,452 votes which gave him 180 electors in the college. Douglas received 1,375,157 votes which gave him but 12 electors in the college. Breckinridge received 847,953 votes, a little more than half of the Douglas vote, but this gave him 72 electors in the college. That is, a

little more than half of the Douglas popular vote gave Breckinridge six times as many electors. While Bell who received nearly 200,000 votes less than half the Douglas vote had 39 electors in the college, or over three times that of Douglas.

In 1884. In the famous Blaine-Cleveland campaign of 1884 the Prohibition party was the third party and held the balance of power. In a total vote of over 10,000,000 Cleveland received a plurality of a little over 20,000, but fell short of a majority by over 150,000. He was elected by a majority in the electoral college of 18 votes. He carried the State of New York by a plurality of 1,149. A change in this State of 575 votes from Cleveland to Blaine, would have elected Blaine by an electoral majority of 17 votes. In this State the Prohibition vote, which came largely from the Blaine ranks, was 25,016; hence the oft-repeated charge that Blaine's defeat was due to the activity of the third party Prohibitionists.

In 1888. In the Harrison election of 1888 his plurality over Cleveland was but 100,476. He fell short of majority by 147,982 votes. His majority in the electoral college was but 32. He carried New York by a plurality of 13,002 votes. A change of 6,502 votes from him to Cleveland would have given the State's 36 electors to the latter which would have elected him to the presidency by an electoral majority of two votes. The Prohibition party cast this year in the State 30,231 votes. This fact indicates that the third party had the balance of power if it desired to use it.

Influence upon dominant parties. Balance of power is the lever in the hand of the third party leader which enables his organization to become effective. When it has reached the point where it can hold the balance of power, it can make its demands with some confidence. To these demands the parties will respond as soon as the point is reached where not to do so is a menace to success. While the Anti-Masons grew out of an episode, they called attention to secret orders and evidently had a salutary effect upon them. This party

gave to the American system the national delegate convention, by which it will be remembered longest.

Of Abolition. While it must be admitted that the Abolition party was erratic in many ways, and left by itself would not have accomplished much, it must also be conceded that it aroused the national conscience upon the evils of the slavery system, and began that organization of opinion which ultimately ended in the emancipation of the slaves. It also became famous for its contention for the right of free speech and the right of petititon for the redress of grievances. It also opened the door of political activity to the women of the country. To the agitation of the old Abolitionist, much of the recognition of women in the forum is due. He insisted upon equal rights without regard to sex.

Other parties. To the old American party is due the country's awakening to the evils of indiscriminate immigration. To the agitation of the temperance issue by the Prohibition party is due in part the general awakening of the citizen to the dangers of the American saloon. While these methods do not meet with general approval their purposes are vindicated by a large element of the electorate. To the various third party movements which have emphasized the labor question is due the recognition of the rights of labor by all political parties.

Motives of leaders. Third party movements originate from various motives on the part of leaders. A representative Democracy is the most fertile field for leadership. It is the normal training place for aspirants for place and power. To render effective the power of selection a political machine is built up, whose ponderous cogs mangle the political ambitions of many a citizen. Few on the outside of the machine are satisfied with its running. Friction on the inside not infrequently causes a break. General dissatisfaction of the outs induces the creation of a third party. Thus the ambition of leaders who from various reasons are shut out of place in the old parties leads to the organization of a new party.

Recognition of younger element. Among such movements will invariably be found a great many young men. The feet of the old politicians are so firmly planted that little attention is paid to the amateur. He must not only win his spurs, but he must do it frequently amid cries of derision and in the face of a storm of criticism. Now and then there is a striking exception to this general rule. This occurs when either by native ability or the combination of favorable circumstances the gates of preferment open to the younger member of the party; hence the adherence of so many young men to third party experiments.

Discredited leaders. Another source of such movements is found in discredited leaders in the old line parties. It is difficult to estimate what part of the leadership of the new party is made up from this class. Men of wide experience and practical ability who have been supplanted by other leaders seek new fields for the application of their talents. Their former standing gives them preferment in the new party. This is not only because of the experience, but also because of his weight as the representative of a defection in the party from which he emanated.

Reform element. Then there is a very considerable element in all these movements who are there from the motive of disinterestedness. Their purpose is the accomplishment of a needed reform. Party is little, if anything, to them and public weal everything. They believe in party as a means of inaugurating reforms, but will not jeopardize country for party. Their observations of the policies of old line parties convince them of the futility of any expectation of reform from them.

In this class will be found a vast number of the clergy of the country. Especially is this true if the issue has a moral phase.

In this class will also be found the scholar in politics whose mode of life is destined to elevate him to see things as they should be, rather than as they are. His methods partake of

the ideal rather than of the real. His keen discrimination reveals the defect in glaring outline and he leaps at the remedy. He subjects himself to criticism often because of his tendency to regulate conduct by a code of rules.

Rule of constitutional interpretation. All third parties invariably take the loose construction view of the Constitution. This is to be attributed to the fact that every party is seeking what the dominant parties have not given. Most frequently the leading parties defend their refusal upon the basis of constitutionality. This necessitates the third party's taking the loose construction view that such legislation is warranted by the Constitution.

Not altogether one idea. Every third party also aspires to become the first party in the country. Hence, while its platform makes one issue paramount, it invariably extends to all issues and makes its pronouncement upon all questions open to discussion in the campaign. The wisdom of this practise has been doubted by many third party adherents. It is pointed out that when the movement becomes a competitor it fails to win the support that it enjoys when it confines its activity to the enforcing of a recognition of the issue for which it stands. It is asserted that the cause suffers when confused with others of little significance. Upon the proposition that the party should be broad gauge rather than narrow gauge, third parties have divided into factions and their identity has been lost.

Their effect. As to the real substantial value of third party movements, there can be little doubt. They serve to stir the waters to prevent stagnation. They operate to arouse public sentiment upon questions of vital importance. To them the country owes the suggestions which later result in valuable reforms. As a balancing power they can compel recognition of questions which otherwise would never reach the stage of an issue. When that stage is once reached the function of the third party is fulfilled.

Method of operation. The method employed to enforce such recognition often compels the party to especially antagonize the party which stands nearest to it in sympathy. In other words, the strokes are most effective when aimed at the vulnerable places in the political armor. The caustic criticism which follows is like that which ensues in a family row. The stage is soon reached when the party which furnished most of the adherents of the third party is the special target for all the sarcasm of the third party leaders, and vice versa. Thus the Abolition party came to hate the Whig from which their adherents largely came. So likewise the Greenback party came into severe conflict with the Democratic party from which the major part of their adherents came. The same is noticed in the Prohibition party with reference to its attitude toward the Republican party.

Their final value. There is little to fear from party activity. The danger lies in party atrophy. The body politic is not in danger so long as its life currents are open. With the dominant parties neck and neck in the race, a third party has an important function to perform and so long will it be kept in commission. With the disintegration of either of the dominant parties, the third party must become either the second or the first in order to be of any significance.

CHAPTER XIII

SLAVERY AS A FACTOR IN POLITICS

Servitude a historical fact. The introduction of slavery into the American British colonies was a response to the then prevailing opinion that slavery was the natural order; that the distinction between the master and the slave was clear and must be preserved; that there must ever be present those who are worked and those for whom the work is performed. This relation had existed in all nations, either in the form of slavery or serfdom or both. When it was discovered that the African could be profitably used in the sugar plantations of the West Indies, slavery was heralded as the greatest blessing of the race, on the ground that the necessary condition of servitude would thus be relieved by supplying the need from Africa, labor which had received the curse of God. (The negro's color was evidence of the curse, so they reasoned.)

Activity of England. As early as 1585, Queen Elizabeth chartered a slave company for that purpose. In 1618, the year before slavery was introduced into Virginia, James I granted a second charter. In 1631 Charles I granted another charter and in 1662 Charles II granted still another, enabling traders to secure slaves from the African coast to sell in the various colonies. In 1672 the Royal African Company was chartered and given a monopoly of the business. In 1713 by the Assiento, the agreement between the Queen of England and the forces in opposition in the war of the Spanish Succession, the Queen obligated her government to supply the

Spanish West Indies with slaves. The treaty expressly declares the obligation to be "to bring into the West Indies of America belonging to his Catholic Majesty, in the space of thirty years, one hundred and forty-four thousand negroes, at the rate of four thousand eight hundred in each of the said thirty years." On four thousand of them a duty of thirty-three and one-third dollars should be paid. England thus secured a monopoly of the trade which was destined soon to people the North American colonies with the African race. They came to be used as house servants and field hands. They were landed in all the colonies but especially in the rice fields of the South.

Slave population in 1774. The following figures are given as representing the number in the various sections of the country in 1774.

Georgia	15,000
South Carolina	110,000
North Carolina	40,000
Virginia	200,000
Maryland	50,000
Pennsylvania	2,000
New Jersey	4,600
New York	21,000
Connecticut	6,500
Rhode Island	3,800
Massachusetts	5,200
New Hampshire	500

Their presence in the South. The large per cent of the population of the States in the South being made up of slaves rendered their presence a danger and misfortune which most of the people keenly appreciated. The institution in most of the States was merely tolerated. At least thirty-three attempts by a single State to cut off further importation were defeated by the British government which refused to interfere with the lucrative trade. In the Declaration of Independence Jefferson indicted the King of England for his part in main-

taining the traffic. This clause was omitted in deference to the people of South Carolina and Georgia. As soon as the various States obtained authority they acted upon the subject. Patrick Henry, Thomas Jefferson, George Washington and George Mason, all of Virginia, were especially outspoken in their disapproval of the perpetuation of slavery. They all expressed the hope that the country would be relieved of it in due time. Individual cases of this opposition were supplemented by anti-slavery societies, the first of which was organized in Philadelphia by Quakers.

Action of the States. The action of the States on the subject was as follows:

In 1774 Rhode Island and Connecticut provided that all slaves thereafter imported into the States shall be free; in 1784 the trade was abolished. In 1776 Delaware provided against further importation. Two years later, 1778, Virginia forbade further importation. In 1780 Pennsylvania followed, and the next year Massachusetts did likewise and was followed by Maryland the next year. In 1784 New Hampshire forbade it. In 1786 North Carolina levied a duty of five pounds on each negro imported. This law was repealed in 1790, and in 1794 further importation was forbidden. In 1788 South Carolina forbade the importation of negroes for three years, and in 1792 forbade it altogether. However, in 1803, on the ground that the importation law had been violated and that it could not be enforced, the trade was again opened. In 1793 Georgia forbade the importation of *free* negroes, and five years later forbade all importation. New York did not take action against this traffic until 1799 when importation of slaves from foreign parts was forbidden. This action was followed by New Jersey in 1804, the last State to act. By this time, as will be remembered, South Carolina had reopened the traffic.

In 1787 — compromises. These facts indicate that at the time the Federal convention was in session, all the

States but five had taken action limiting further importation of slaves. Three of these were from the South. But the actual presence of the slave was recognized, and certain guaranties were entered into. Three compromises in the convention were made with reference to slavery: one of them was the return to the owner of a fugitive slave, another to allow the slave population to count in the make-up of the State's representation in Congress, allowing five blacks to equal three whites, and the third forbidding the government to interfere with the importation of slaves for twenty years, except to levy a duty not over ten dollars a head. These provisions did not establish an endorsement of the institution, but simply a recognition of it. The same Congress that authorized the calling of the Federal convention, while the convention was in session, enacted the ordinance for the government of the Northwest Territory, forbidding for all time the introduction of slavery into that territory.

Situation in the Northern section. Most of the States in the Northern section of the country took early action against the continuance of slavery within their borders. But in most of the States it lingered far down the century. The first census, in 1790, shows a slave population exclusive of free blacks, in all the States, of 697,897. The census in 1800 gave a slave population of 893,041. In that year all the States reported slaves except Maine, Massachusetts, Ohio and Vermont. The third census, 1810, gave a slave population of 1,191,364, in which all the States reported slaves except Massachusetts, Ohio and New Hampshire. In 1820, 1,536,-135 slaves were returned from all the States except those just mentioned and Michigan.

In 1830 there were 2,009,043 slaves reported. Every State reported slaves that year except Vermont. Massachusetts reported 1, Maine 2, New Hampshire 3, Indiana 3, Ohio 6, and Michigan 32. The sixth census, 1840, reported 2,487,455 slaves in which every State reported slaves but

Vermont, Massachusetts and Michigan. The next census showed the slave population to be 3,204,313. No slaves were reported from the following states: California, Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin. The eighth census, in 1860, gave 3,953,760 slaves in all the States then holding slaves, which included all save the fifteen before mentioned and Minnesota and Oregon. It is observed that slaves continued to be held in the States long after the enactment of laws forbidding it. And it will appear that slavery was permitted in the States erected from the territory of the Northwest in spite of the Ordinance of 1787.

Increase — where, when, why? The great increase was in the Southwest, in the cotton States. Alabama reported her first slaves in 1820, when she gave 41,879. By 1830 this number had increased to 117,549 and to 253,532 in 1840 and to 435,080 in 1860. Mississippi increased her slave population from 17,088 in 1810 to 436,631 in 1860. Other new States in the South and Southwest increased in like proportion. This tremendous growth was due to specific conditions. Prior to the invention of the cotton-gin in 1792, it required a full day's labor of a slave to separate one pound of the cotton fiber from the seed, but the cotton-gin multiplied the effectiveness of labor to such an extent that the culture of cotton became profitable. The sea island variety of cotton which, being confined to the regions along the coast, and thus limited in its production, was augmented about this time by the discovery that the short fiber cotton was adapted to the Up-country soil. This discovery insured the culture of cotton over a vast area of the country.

Figures given. The increase in the production of cotton was astonishing. In 1784 eight bales which had been shipped to Liverpool were seized on the ground that so much cotton could not have been raised in America. In 1789 the product

was about 1,000,000 pounds; in 1790 nearly 2,000,000; in 1793, 5,000,000. Three years later it reached 10,000,000 pounds; by 1800 it amounted to 60,000,000 pounds, and increased to 80,000,000 by 1806. Henceforth cotton ruled the industrial South. Tremendous demands were laid upon the supply of labor, and especially slave labor. In the year 1836, at least 250,000 slaves were sent into the Western cotton fields. Of this number Virginia alone furnished 120,000. In 1798 the price of a field hand was two hundred dollars. This was the average price of a slave, old or young. In 1815 he brought two hundred and fifty dollars. In 1840 he commanded five hundred dollars. By 1860 a good field hand brought as much as one thousand four hundred dollars. Just before the war there was much alarm over the agitation in certain circles in reference to the opening of the foreign slave trade to supply the great demand for labor. It was openly urged in places in the South. The Southern Commercial Convention in 1855 recommended its reopening. In 1859 Alexander H. Stephens favored it. In the same year the African Labor Supply Association was formed. During this year it is estimated that at least 15,000 slaves were imported into the Gulf States.

Natural conditions that favored it. It was the confirmed belief that only slaves could profitably produce cotton. The labor necessary was not adapted to the constitution of the Anglo-Saxon, and it was thought the negro would best perform it when acting in slavery under an overseer. The warm climate rendered the keeping of slaves a matter of small expense. His clothing was meager, his food simple, and it was possible to employ him all the year — all of which it was thought made him a much less expensive laborer than the white. The fact that all of these conditions were absent from the North explains why slavery took such hold in one section while it decayed by slow degrees in the other. Slave labor cannot successfully compete with free labor.

These conditions produced several distinguishing features in the civilization of the South. The presence of the slave stratified society in a certain degree, and rendered labor undignified. The presence of the slave also confined the energies of the South for many years to one activity. It shut out manufacturing, hence until recently the South was compelled to send its raw material out to have it made into the finished product.

Source of opposition. Opposition to slavery emanated from various sources and motives. In the South it had been feared that the slaves might arise and murder the masters and their families, especially where the black outnumbered the white population. Then others opposed it as an economic evil, while still others desired its abolition on moral and religious grounds.

Lundy. In 1815 Benjamin Lundy organized an anti-slavery society in Virginia, which rapidly increased in membership until it enrolled hundreds. He operated through the printing press. His method was persuasion, and compensation by the State if forcible emancipation was required. For years he traveled through Maryland, North Carolina and Virginia, in all of which he left many societies devoted to the gradual abolition of slavery.

Quakers. The earliest efforts to ameliorate the condition of the slave were undertaken by the Quakers. They began to discipline the membership on the subject. To countenance the right of one man to hold property in another was thought wrong. John Woolman traveled far and used his great influence to unify all Friends against the traffic.

Other religious activity. In 1784 the Methodist Conference resolved to suspend any preacher who held slaves and in 1796 the Church disciplined its members for purchasing slaves. In 1789 the Baptists of Philadelphia, approved of the Abolition Society and recommended the co-operation of the churches. In 1791 the New Hope Church was the first dis-

tinctive church opposition to slavery. The Baptist Church being strong in the South, it became an effective influence against slavery. The Presbyterian church took a non-committal position. However, the various elements in opposition to slavery were sufficient to call attention to it.

Appearance in Congress of petitions. In 1790 two petitions were presented to Congress; one was "The Address of the Quaker Meeting" from Northern States praying for the abolition of the slave trade, the other a memorial of the Pennsylvania Abolition Society praying for the abolition of slavery. This petition had the name of Benjamin Franklin upon it. These memorials were referred to a special committee which made an elaborate report outlining the limitation of the authority of Congress over slavery. It pointed out the constitutional inability to interfere with the importation of slaves prior to the year 1808. It also declared that Congress had no authority over the institution within the States.

Jefferson on colonization. At the opening of the century Jefferson considered the proposition of colonizing the blacks by themselves. He thought the Western country might offer a suitable place. He also favored sending them to Sierra Leone, if England would permit it. The British government refused to consent. Later the Free Republic of Liberia on the west coast of Africa was established for the home of free colored people.

Progress of anti-slavery sentiment. In the meantime individual efforts toward the amelioration of the slave leading to gradual emancipation were kept up. In 1812–20 the *Emancipator* was published. In 1815 the Tennessee Manumission Society was formed. In 1821 Lundy started his *Genius of Universal Emancipation.* In 1827 the *African Observer*, a publication designed to ameliorate the condition of the slave, made its appearance. Four years later Garrison issued the first number of the famous *Liberator* from Boston. Up to this time much of the activity for manumission was in the Southern

States. It had all been of the milder sort. But with the advent of the Garrison movement a new and more aggresive spirit was to rule. From this time on the South attempted to suppress within its borders all sentiment tending to emancipation.

First anti-slavery convention. In 1833, in the City of Philadelphia, the first Anti-Slavery convention was held. It was attended by sixty-two delegates, among whom were Garrison, Tappan, Whittier and Lucretia Mott. The convention adopted a declaration of principles and declared its intention to organize an anti-slavery society in every city, town and village in the land, to send its agents and its literature broadcast; to enter the pulpit and persuade the Church to take a stand against the traffic. They also resolved to discourage the institution by discriminating against the products of slave labor in favor of those of free labor. Thirty years later Whittier wrote, " I set a higher value on my name appended to the Anti-Slavery Declaration of 1833 than on the title page of any book."

Its hold. The agitation spread throughout the Northern States with wonderful rapidity. In Ohio within five years over three hundred local societies were organized. In other States similar activity was aroused. This agitation at once reached Congress. It came in the form of petitions praying for the abolition of slavery, its expulsion from the District of Columbia, and its exclusion from the various Territories.

The Missouri question. The first great fight in Congress came up in connection with the admission of Missouri as a State in the Union. In certain quarters of the North the three-fifths rule, which gave the slave States undue advantage of representation in the Lower House, induced the effort to exclude slavery from the State as a condition for admission. The rule was also opposed on the ground that it would establish a precedent in favor of all the remaining States to be erected from the Louisiana Purchase territory. This opposition was not sentimental but political. It did not proceed

from dislike of the institution so much as from inequality of influence in the national legislature. The friends of Missouri succeeded in linking its admission with the admission of Maine, and took a firm stand that if the former were kept out of the Union the latter should also be denied admission. At last a compromise was reached by which Missouri was admitted with the privilege of holding slaves, but with the stipulation that its southern boundary should be the dividing line between slave and free States. North of the line, slavery was forbidden; south of the line, it was left to the vote of the people of the Territory desiring admission.

Character of the agitation. By the time the agitation for the annexation of Texas came on, the ground of inequality, which had stimulated the contest over Missouri, had expanded until it had included much of the sentimental character. The anti-slavery movement, which invaded Congress in the form of petitions, had given to the agitation an entirely new meaning. The earnestness of the agitators could no longer be ignored, nor could the efforts of the pro-slavery element be concealed. It became a common occurrence on their part to defend their peculiar institution in the forum, on the stump and in the press. The literature of the day brings to light many able defenses from the best brain of the South. Some of these took a religious and moral tone. It was frequently urged that slavery was of divine origin. The earnestness of these defenses was in proportion to the danger which threatened the institution. The tendency to the solidification of the entire North against the further spread of slavery alarmed the South.

Natural factors. From the very beginning of the national government, the North had increased in population more rapidly than the Southern section. This was due to at least two causes: (1) immigration, the chief element of growth, came to the North because of the varied industries, and (2) the South confined its energies to the product of the soil,

while the North engaged in various occupations. This invited the home seekers to the North rather than to the South. Labor in the South being slave, placed it in an undignified form and stratified society in such a degree that free labor refused to enter into competition with slave labor; hence the falling off of the South in the race of population. This fact gave the free States control of the national House of Representatives.

Senate, the arena of the contest. The Senate is a political body, in that it depends upon the will of Congress for its numbers. It had been the practise of the government from the beginning to admit States in pairs of free and slave. At the beginning of the government the proportion stood as follows:

Contest for equilibrium. Free States, or those which were soon to be such — New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, and New Jersey — 7.

Slave States — Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia — 6.

This proportion gave the free States fourteen senators, and the slave States twelve. In 1791 Vermont increased the free States to eight, and Kentucky (1792) and Tennessee (1796) increased the slave States to the same number, which gave an equal vote to the two sections in the Senate. This equilibrium was maintained as follows.

Free States	Slave States
In 1796, Eight. Sixteen senators	Eight. Sixteen senators.
In 1803, Ohio, two senators	
In 1812,	Louisiana, two senators.
In 1816, Indiana, two senators	
In 1817,	Mississippi, two senators.
In 1818, Illinois, two senators	
In 1819,	Alabama, two senators.
In 1820, Maine, two senators	
In 1821,	Missouri, two senators.
In 1836,	Arkansas, two senators.
In 1837, Michigan, two senators.	

Texas. Down to this time when the slavery agitation had become quite serious, the balance in the Senate was kept unbroken. When the proposition for the annexation of Texas came up the Senate contained fifty-two Senators, twenty-six from each section. The Missouri Compromise had guaranteed all the remaining portion of the territory except Florida to the tier of free States. By the census of 1830 the twelve free States had a population of 7,000,000, which gave them twenty-four senators and one hundred and five members of the House of Representatives, which was increased by 1832 to 141 members. The twelve slave States had a population of 5,848,000, of which 2,153,000 were slaves. This gave them 24 senators and 82 members of the House, which number increased to 99 in 1832. In 1840 the population of the thirteen free States was 9,778,834, to 7,290,619 for the slave States, of which 2,486,300 were slaves. This disparity of population of the two sections in favor of the North gave the slave States no hope of controlling the national House of Representatives. The exhaustion of the territory from which States could be carved and admitted as slave States, with vast stretches lying north of the compromise line, insuring the admission of several free States, pointed to the time when the equilibrium in the Senate would be destroyed and both the House and the Senate lost to the South.

Calhoun's motive. This situation was the real controlling motive in the annexation of Texas and furnished most of the opposition to the measure from the North. When the measure was consummated, the expectation was to create four new States in addition to Texas, which would have given the slave States increased influence in the Senate. By the admission of Florida and Texas in 1845 the balance in the Senate was in favor of the South by a majority of four. But the rapid development of the free section promised soon to change the result. Iowa, when admitted, reduced the majority to two.

EXPANSION MAP OF THE UNITED STATES

Mexican War and Wilmot Proviso. The precipitation of the war with Mexico was regarded by many as in the interest of the extension of slavery. To thwart such a result the Wilmot Proviso was introduced. It provided, "That as an express fundamental condition to the acquisition of any territory from the republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and the use by the Executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted." This measure passed the House but failed to become a law. It keenly offended the South which looked upon it as an attempt to exclude the people of the Southern States from territory purchased by the valor and treasure of the whole country. This feeling was augmented by the wide and enthusiastic support the measure received throughout the entire North.

Discovery of gold in California. The discovery of gold in the newly acquired territory was occasion for a flood of emigration to that section. California was admitted as a free State by the Compromise of 1850, the measure that sought to adjust the dispute that had become acute. While the North held that the South had gained by it, the fact proves that the equilibrium in the Senate was destroyed in favor of the North, an advantage never again lost.

Kansas-Nebraska bill. In four years Senator Douglas succeeded in enacting into law his scheme of "popular sovereignty," a measure repealing the Compromise of 1820, and opening the vast territory north of the Compromise line to the introduction of slavery. The fugitive slave feature in the Compromise of 1850 and the reopening of the free territory by the Kansas-Nebraska bill of 1854 did more to arouse anti-slavery sentiment than all the efforts of all the Abolitionists in all the preceding years. They gave an opportunity for concentrating opposition to slavery.

Effect of the election of Lincoln. Upon the election of Lincoln the South feared that the last hope for their peculiar institution was gone. Both branches of the national legislature were hopelessly lost. The return of the escaping fugitive was openly and secretly obstructed in many quarters. The protection of the slave-holder in his property in the Territories was not respected. The statesman who denied the right of the Supreme Court to dictate his political theory had been endorsed by his election to the presidency. These considerations induced South Carolina to take the fatal step of Secession.

CHAPTER XIV

STEPHEN A. DOUGLAS, THE ADVOCATE OF "POPULAR SOVEREIGNTY"

Popular sovereignty. "Popular sovereignty," as a theory of government, should not be confused with constitutional supremacy on the one hand, nor State Sovereignty on the other. Constitutional supremacy, as a theory, derives its force from the sovereign sanction of the people through the Constitution. State Sovereignty, as a theory, derives its force from the reserved rights not granted away. While popular sovereignty claims its force from the inherent and inalienable right to govern one's self so long as it does not interfere with the rights of others. When applied to the Territories popular sovereignty meant that the question whether slavery was to be tolerated there or not, was a question for the people of the Territory and them only to determine that Congress had no authority in the matter. All and any legislation upon that point by Congress was unwarranted, because it ignored the fundamental principle of local self-government.

Stephen A. Douglas. The greatest exponent of this theory was Stephen A. Douglas. A native of Vermont, he became a citizen of Illinois and in 1834, when twenty-one years old, was admitted to the Bar. Nine years later he entered Congress as a member of the House of Representatives. He continued in this capacity until 1847 when he was elected to the Senate, which position he held up to his death in 1861. Prior to his entering Congress he had held the position of attorney-general,

member of the legislature, Secretary of State, and Judge of the Supreme Court of Illinois. His was a dashing nature, an impetuous personality and a capable mind. He added to an insatiable ambition, an eloquent tongue. His friends were delighted to call him the "little Giant of the West." His public life in the service of the national government covered the period immediately preceding the Civil War. His make-up rendered him capable of entering into the stirring scenes with the spirit of the fighter. He was an ardent Jeffersonian in politics. He believed in the largest liberty consistent with good government. He consistently endorsed the principles of Democracy, believed in Jackson, and repudiated Calhoun. At the time of the latter's death, Douglas was the recognized leader of the party, a position won by his ability. He was alert to the growing disturbance over the slavery issue. He coincided with the great mass of citizens in recognizing its existence in the nation, but beyond its power to interfere with it in the States. He had no sympathy with the abolition movement, regarding it as a wicked disturbance with no promise other than evil to the nation.

His theory of politics. By nature he was an expansionist. He believed in the bigness of things. He frequently referred to the government when it should extend from ocean to ocean. He also inclined to the future annexation of Canada, and referred to the time when Mexico would seek admission, which he intimated should be acted upon favorably. It was but natural that such a nature would ardently support the policy of the annexation of Texas; and when it became a part of the Union and war with Mexico followed as a consequence, he gave the Administration his hearty support at the time the country was holding up President Polk for precipitating the war.

His early attitude on slavery. He looked upon the Wilmot Proviso as a blunder, as he believed the status of the slave could be left to the people interested. This was before the

announcement of the new theory of non-interference with slavery in the Territories. This theory was promulgated by Calhoun in 1848 in the discussion over the question of the organization of a territorial government for Oregon. Here the two sections of the country came into direct conflict. From certain quarters came a demand to attach the prohibition of the Ordinance of 1787 to the Oregon Territory; while from other quarters came the demand to extend to the institution of slavery the protection of the law. At this juncture Douglas introduced a measure to extend the Missouri Compromise line to the Pacific Ocean. The Senate passed it but afterward rescinded its vote. The problem sought a solution in the Compromise of 1850. There was a well defined belief that a crisis in the nation was pending and that it was narrowly averted by this Compromise. In this conviction the two parties, the Democratic and the Whig, accepted the Compromise as the solution of the slavery problem and pledged themselves against reopening it.

Kansas and Nebraska. The rapid expansion of population into that part of the country now occupied by the States of Kansas and Nebraska, called for action looking to the erection of new States. The first step was to organize the Territories and give them a form of government. By this time the organization of any Territory was the occasion for a test between the forces for free territory and those for slave territory. Senator Douglas came forward with his favorite scheme to permit the people of the Territory to decide the question of slavery. His bill is known in history as the Kansas-Nebraska bill. It denied to Congress the power to interfere with the status of the slave in the Territory. Its legal effect was the repeal of the Missouri Compromise, which had fixed the question of slavery north of the line 36 degrees 30 minutes. Its political effect was a storm of protest from Northern quarters. From Washington an "Appeal" was sent out signed by Giddings, Chase and Wade of Ohio, and

Sumner of Massachusetts, calling upon the people "to rally and save the Union from disruption; upon the churches and all Christians to interpose in the interests of mankind; and upon all who could, to use their utmost efforts to induce their congressmen to rebuke the crime." In a brief time the entire free States were ablaze with excitement.

Non-committal doctrine of Douglas. Senator Douglas eloquently maintained that his theory would neither legislate slavery *in* nor *out* of the territories. He argued that it pursued the laws of reason and right. It was right to give to the people self-government, and the status of slavery would depend upon whether they wanted it or not. If they wanted it they would have it, and if they did not want it they would not have it. Its existence would depend upon public opinion at any cost. He contended that the principle of popular sovereignty was the only fair application of self-government. This Kansas-Nebraska bill furnished the principal occasion for the organization of the Republican party. In several States fugitive elements floating about came together. Some of them called themselves Republican, but most of them took the name Anti-Nebraskaists. In Illinois, conventions were held and platforms were adopted in several congressional districts. These platforms demanded the restoration of the Territories of Kansas and Nebraska to free territory; the repeal of the Fugitive Slave Law, the restriction of slavery to the States where it then existed; the refusal to admit any more slave States; the abolition of slavery in the District of Columbia; the exclusion of slavery from all territory over which Congress has exclusive jurisdiction.

Anti-Nebraska sentiment. These became the issues upon which a new organization worked. In 1856 the principles were clarified, a platform adopted and candidates placed in the field. The issue was clearly drawn between the Democratic party and the newly organized Republican party. The former repeated its determination to abide by the settlement

of the slavery question as outlined in the Compromise of 1850 and the popular sovereignty theory of 1854, while on the other hand, the Republican party declared that Congress was sovereign over the Territories, and it was its right and duty to prevent therein both slavery and polygamy.

Obliteration of party lines. The overshadowing influence of the slavery question went far toward the obliteration of old party lines. The new party drew into its ranks elements from all parties. The old Whig party was soon to lose its identity. The Democratic party divided on theory. Douglas had established himself as the leader, but not of the whole Democracy. The mantle of Calhoun fell upon the shoulders of Jefferson Davis, whose brilliant parts and proud constituency fitted him to bear the honor. The popular sovereignty of Douglas did not satisfy the Southern man's sense of either theory or protection; he demanded State Sovereignty.

Lecompton constitution. This confusion of theory was reflected in the episode of the Lecompton constitution. This was a constitution adopted as the constitution for Kansas. It forbade the legislature of the State to prohibit slavery. It was framed by a convention which refused to allow it to be submitted to the people of Kansas for ratification. This was in direct opposition to the theory of Douglas who offered telling opposition to the admission of the State in such manner. This divided the Northern Democracy, and unified the South against Douglas. The slave States insisted that slaves were property, and being such, their owners claimed protection for them in the Territories; that Congress had no authority to exclude slavery but was bound to extend to it the protection which the Constitution guarantees to property.

Slavery before Supreme Court. Upon this question the Supreme Court pronounced, in 1857, in the famous Dred Scott decision. Scott had been held a slave and was carried into Illinois from a slave State, and later into that part of the

Louisiana Territory north of 36 degrees 30 minutes, in which slavery was forbidden by the Compromise enactment of 1820. Later he was brought into Missouri. He instituted a suit for his freedom. The lower State Court found in his favor, when the decision was appealed to the Supreme Court of the State. Here the case was decided against him. It was tried later in the Circuit Court of the United States, and appealed to the Supreme Court. In the latter, two questions were before the Court: (1) Can a negro of African descent whose ancestors were slaves be a citizen of the United States? and (2) Was Scott a slave at the time he brought the case?

Dred Scott decision. Four judges of the court decided that the lower court had not jurisdiction and therefore the case was not properly before the court. Three of the judges, Taney, Wayne and Daniel, were of opinion that the Court could take cognizance, and thought Scott could not be a citizen. Two, Curtis and McLean, decided that he was a citizen. The second question, whether Scott was a slave at the time he brought the suit, was to determine the constitutionality of the law commonly known as the Missouri Compromise. On this question, Taney, Wayne and Daniel held the law was unconstitutional. This opinion was shared by three others, making six in all. Judges Curtis and McLean held the law constitutional, while Judge Nelson gave no opinion on either question. This analysis shows that the decision was not regular, and it is held by the best constitutional lawyers that it cannot be cited as a precedent.

The decision before the public. But as the decision stood in the public estimation, it decided that a slave was property, and as such he could be carried into any Territory, and there receive the same protection accorded any property. That a law to prohibit it from entering into any Territory would be discriminating against property and therefore not warranted by the Constitution. The press reports, published broadcast, convinced hosts of people that the judges, in the effort to quiet

the serious agitation, had rendered a decision not warranted by the facts, and therefore the decision was not binding. This appeared to be the attitude of most of the Republican party, including Lincoln. The decision in law was a victory for the theory of the South. They had now the sanction of the highest court in the world, that the Constitution followed the flag and carried with it all its protection. Congress could not prohibit slavery from the Territory any more than it could interfere with it in the States. The Territory could not interfere with it, since the government is bound to lend it protection.

Its general effect. In the North the announcement of the decision inflamed the public mind. It was charged that the decision was the result of a conspiracy to extend slavery into all the States and re-open the slave trade. They professed to believe that it was one of many steps to make the nation a slave-holding nation and that all the States were subject under the decision to being compelled to admit the master with his slaves. On the 17th day of June, 1858, in the city of Springfield, Illinois, Abraham Lincoln made a speech in which he gave utterance to some remarkable ideas. He declared his opinion that the slavery question would continue to agitate the people until a crisis had been reached and passed. He said he did not believe the government could permanently endure half slave and half free. He charged it upon the leaders of the Democratic party to be their purpose to extend slavery into the entire North. He thought he could see in the conduct of Douglas in his popular sovereignty scheme, in Buchanan and Pierce in the Lecompton affair, and in Taney in the Dred Scott decision, evidence of his fears.

Lincoln, a shrewd opponent. These debates afforded the best opportunity to examine the political theories of these two leaders. Mr. Lincoln had the advantage in that he had nothing to lose, while Douglas had much to lose. The latter had been in the public eye for a decade, and was accepted in 1858 as the most prominent Democrat of the nation. All

the North conceded his claims upon his party. His utterances therefore evoked the sharpest scrutiny. Lincoln, aware of the situation, drew the lines so tightly about Douglas that the latter could not escape. Douglas in the first debate propounded a series of questions to Lincoln, who said he would answer them if Douglas would answer questions propounded to him. Lincoln with his keen logical eye could see the trap that the Dred Scott decision had set for his opponent and he drove him into it. The Supreme Court had decreed that Congress could not prohibit slavery in the Territories and inferred that the territories could not legislate it out, as the Constitution followed the flag.

Popular sovereignty as Lincoln saw it. The popular sovereignty theory of Douglas in the debate was that the people of a Territory could do as they liked about the subject, vote it down or vote it up. With this in mind Lincoln pressed an answer to the following question: "Can the people of a United States Territory, under the Dred Scott decision, in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a State constitution?" To answer in the affirmative was to deny constitutional protection, and that would offend the slave States. To answer in the negative would be to belie his theory upon which he announced he would stand all his life. An affirmative answer, in the light of the Dred Scott decision, would be to say that "a thing can be lawfully driven away from a place where it had a right to be." This contest cost Douglas severely. His popular sovereignty theory was not respected in the slave States, and it greatly alarmed the free States. Many of the free States resented the attitude of the "Little Giant" of minimizing the slave issue. His declaration, made over and over again, that he did not care "whether you vote slavery up or vote it down," offended many of his admirers. The people of the free States were concerned whether there was a constitutional barrier to the introduction

of slavery into all the States as well as the Territories. Douglas's statement that if a people wanted slavery they should have it, looked to many to carry with it as a logical conclusion that if Georgia wanted to buy slaves from Africa, she should be allowed to do so. All this, in the face of the activity in some quarters concerning the reopening of the slave trade, alarmed many people. Douglas replied to this uneasiness that he would be opposed to that because the prohibition of the slave trade was a compromise of the Constitution. In reply to this it was said that it was not a compromise. The Constitution simply forbade the prohibition prior to the year 1808.

In the campaign for the Senate Douglas defeated Lincoln and succeeded himself. But he was humiliated by the vote. Mr. Lincoln received the majority in the State, but owing to the method of districting Douglas received a majority of the legislature. Such a victory was not a source of pride to a man of the type of Judge Douglas.

State rights as Douglas understood them. Judge Douglas was careless in his use of language. He failed to make fine discriminations, more from habit than inability. He employed phrases loosely, which might mean one thing or some other thing. He glibly talked of State Sovereignty, State rights, reserved rights, unconstitutional tendencies, revolutionary principles, etc., which in his use might mean various things, but in the use of Calhoun or Webster would mean specific things. In his Chicago speech July 9, 1858, Douglas said: "I deny the right of Congress to force a slave-holding State upon an unwilling people. I deny their right to force a free State upon an unwilling people. The great principle is the right of every community to judge and decide for itself whether a thing is right or wrong, whether it would be good or evil for them to adopt it; the right of free action, the right of free thought, the right of free judgment, upon the question is dearer to every true American than any other under a free government. . . . Whenever you put a limitation upon the

right of any people to decide what laws they want, you have destroyed the fundamental principle of self-government."

A loose use of terms. At Jonesboro he said, "If we live upon the principles of State rights and State Sovereignty, each State regulating its own affairs and minding its own business, we can go on and extend indefinitely, just as fast and as far as we need the territory." From the days of nullification the terms State Sovereignty, reserved rights, revolution, had special significance which had been expounded continuously in the controversies in Congress. Douglas was aware of their significance. Their significance was never better understood than from 1850 to 1860, during which the "Little Giant" was the most prominent figure in his party. Douglas had been charged with purposely confusing his terms to avoid forcing the issue. At that time, political theory was so confused that no party was a unit. The state of the parties was disintegration. The old Whig organization had collapsed, and before another presidential election it was entirely absorbed by various other parties. The Abolition or Free-soil party had largely lost its identity in the newly created party called Republican, and the radical abolition principles had given way to the more conservative view of confining slavery where it then existed. The Republican party stood upon the theory that the Territories were under the control of Congress which had the power to exclude slavery from them.

Division over the subject. The Democratic party was far from a unit in theory. The Douglas wing of it held that the Constitution neither established nor prohibited slavery in the Territories, but left the people of the Territory free to do as they liked in reference to it. Congress had no power therefore to interfere in the matter. Interference would be in violation of the most sacred principle, the right of self-government. The Douglas opposition was divided into two factions: the one held that the Constitution established slavery in the Territories and denied the power in either the Territories or

Congress to control it, and in case the territorial legislature failed to enact laws for the protection of slavery in their midst, it devolved upon Congress to supply the protection; the other faction held to the same view regarding the constitutional sanction of slavery in the Territories, but sought protection in the courts.

The view of Douglas in 1859. In the month of September, 1859, *Harper's Magazine* published a lengthy article from the pen of Senator Douglas, in which he gave an exposition of his popular sovereignty theory. He examined the objections offered by his opponents. To the claim that if Congress can erect a government for a Territory, it can regulate through that government its institutions; that if the Congress is the creator, the territorial government is the creature, he replied: "Congress can create inferior courts and confer upon them jurisdiction, but it cannot assume the jurisdiction itself." Likewise he held that Congress could erect a territorial government, but it could not become that government itself. He identified the Territories within the government with the colonies under the British government. He declared that the fundamental principle of the Declaration of Independence was the right of self-government; that the colonies deplored the necessity of separation, and would never have taken the step had it not been for the establishment of the inalienable right of self-government. He attempted to show that the denial of this principle had fixed slavery as an institution upon Virginia which had frequently but vainly petitioned the mother country to stop the importation of slaves. He quoted from the Stamp Act and other documents to prove that it was not independence but the right of self-government that the colonies desired. He emphasized the fact that the Articles of Confederation expressly retained sovereignty in each State; also the fact that the States had ceded their Western territory to the general government with the stipulation that independent States should be erected and admitted to the Union.

His interpretation of the powers of Congress. He asserted that the Ordinance of 1784, which was the first attempt to organize a government for a territory, recognized the inalienable right of the people of the territory, when organized into political communities, to govern themselves. The ordinance itself provided that all preceding articles should be formed in a *charter* or *compact*, which means, according to Senator Douglas, that the Territories could govern themselves without the interference of Congress, just as the colonies claimed the right without interference from the British government. He laid stress upon the fact that Jefferson was the author of the Ordinance of 1784. He would have it that the Ordinance of 1787, which forbade slavery for all time, fell under the same principle, and undertook to explain the incompatibility of his theory with the congressional prohibition by silence. The least tenable position of Douglas, was his explanation of the Clause of the Constitution which reads: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." He argued that *territory* in this connection referred to unoccupied lands owned by the government, and not by the people who settled them. This power allows Congress to dispose of public lands, military sites, cannon, muskets, old ships, etc. It applies, he insisted, to States as well as to Territories, but it did not extend to the control of domestic institutions and internal polity of the people either in State or Territory, otherwise freedom and sovereignty of the States would be exterminated. He declared such ideas repugnant to the genius of our system. It effectually blots out the line of separation of the States from the Federal government. It denies the very principle for which our fathers fought. It asserted a thing was wrong after the Revolution that was right before it. He claimed this clause referred to the power to govern the seat of government, docks, navy yards, arsenals, etc. In proof of his contention

he quoted the tenth amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Rights in a territory. He insisted that a denial of the principle of popular sovereignty would assert the right to maintain provinces within the government. This is forbidden by the United States Supreme Court in the Dred Scott decision. To avoid it the Constitution provides for the admission of new States into the Union. The power to acquire territory, he urged, carries with it the power to preserve and apply it to the purposes for which the territory was acquired; hence the right to secure to the territory self-government. The citizen and the government both enter it, and the government cannot exercise any power not conferred upon it by the Constitution. All this course of reasoning was employed to reach the end in view. Douglas had, as he thought, discovered a method by which he could allay the agitation over the slavery question, a question looked upon as having reached the critical stage. He called his method by the catch phrase, "popular sovereignty." It permitted the people of a Territory to order their own institutions without the interference of Congress. This, he believed, was the logical remedy for the acute situation. He supported his policy by asserting it to be the fundamental theory of the fathers, as revealed in their acts as well as in the Constitution itself.

Real motive of Douglas. There are those who believe that the enthusiasm of Douglas in the support of the popular sovereignty theory can be traced to his ambitions to reach the presidency. Whatever may have been the motive, the principle, as expressed in the Kansas-Nebraska bill, was the greatest political blunder of the decade. Its repeal of the Missouri Compromise, for the sake of a principle, reopened to slavery the vast Northwest which had been pledged to freedom, a consummation accepted by all parties of all sections, as final.

From that moment the West became the battle-ground between the slave and the free State interests. The "Irrepressible Conflict" seemed at hand. Disunion and Secession were words of frequent use in and about the Capitol at Washington. Opposition to the extension of slavery was rapidly unifying, while the "popular sovereignty" people of the North and the State Sovereignty people of the South were drifting away from each other.

Importance of his loyalty. As between Secession and perpetuity of the Union, there was to him but one choice for the patriot. It would be difficult to estimate the effect of Douglas's influence. As the recognized leader of the opposition to Lincoln a refusal to support the war policy of the President would have resulted in incalculable evil to the country. He died at the very outset of the test of arms, even before a single great battle had been fought, but not until he had given the weight of his powerful name to the cause of the Union. Whatever of bitterness might have been occasioned by his fatal political blunder for the sake of an untenable theory, it was all atoned for by his manly attitude toward the prosecution of the war for the preservation of the Union. "Popular sovereignty" on the one hand, and State Sovereignty on the other, with slavery as the fertile breeder of both, went down together in the crash of civil war.

CHAPTER XV

NATIONAL NOMINATING CONVENTION OF 1860

Ominous signs. The contest which elected Buchanan to the presidency by a narrow margin, though not giving him a majority of the popular vote, and the amazing growth of anti-slavery sentiment showed unmistakable signs of disunion. The leaders both North and South expressed their fears for the Union. The South had already solidified and was ready to present a solid column for the protection of its peculiar institution. The North was rapidly taking the same form for an opposite purpose — the arrest of the further spread of slavery. Douglas rested his claims for the presidency upon the Kansas-Nebraska legislation of which he was author, which legislation had replaced the Missouri Compromise. This latter had been law for a quarter of a century and the anti-slavery element of the North did not take kindly to its repeal and arrayed itself against Douglas. His popular sovereignty policy was equally obnoxious to the South which declared for constitutional protection of slavery. Douglas was warned of the South's attitude toward his policy in the nominating convention, — the same convention which accepted Buchanan as the presidential candidate when it could not have Pierce.

Situation of Buchanan. Buchanan's obligation to the section which nominated him embarrassed him not a little in his administration. In his attempt to honor his obligation to the South he fell beneath the wheels of his own chariot. His alleged connection with the withholding of the announcement

of the Dred Scott decision until after the election and his attempt to enforce the Lecompton constitution upon the people of Kansas, concentrated the Northern sentiment against him.

Lincoln and Douglas. The wide general interest in the Illinois contest between Lincoln and Douglas for a seat in the United States Senate was due to the position each took upon the sensitive question of slavery. Lincoln had startled the entire nation by his Springfield speech of acceptance in which he declared that the nation cannot permanently endure half slave and half free. This was accepted as the challenge to the South. Douglas partially retrieved his position by pronouncing the Lincoln doctrine revolutionary. His position of popular sovereignty as against Lincoln's position of ultimate freedom, unified the Democrats of the North, but failed to win those of the South. Then followed the widely-read debates of Lincoln and Douglas. These at once became of national interest. They cleared the political field of ambiguous issues. Lincoln at once became a national figure. Douglas had been one for years.

Democratic situation. While the spirit of sectionalism was at white heat the Democratic convention met at Charleston, South Carolina, to nominate a successor to James Buchanan. A struggle was imminent between the Northern and the Southern Democracy with the advantage to the Northern wing. But this advantage was counterbalanced by the convention being held in South Carolina, famous for her doctrines of State Sovereignty.

Charleston convention. The convention assembled on the 23d of April with every State represented and with contesting delegations from New York and Illinois. This latter fact was ominous, as one delegation from each State was anti-Douglas.

Organization. On the second day the committee on permanent organization recommended the suggestive rule of voting in the convention, " That in any State in which it has

not been provided or directed by its State convention how its vote may be given, the convention will recognize the right of each delegate to cast his individual vote." This was against the "unit rule" which in Republican conventions in recent years had created much disturbance. Another significant position taken by this historic convention was its appointment of a committee on resolutions, and the decision of the body not to present the nominations until after this committee had reported.

Contest over delegate and platform. This ruling left the convention with little to do until after the report of the platform. On the third day of the convention the entire session was taken up in angry debate over the seating of delegates. The matter ended with the former decision confirmed, and the Douglas delegates from both New York and Illinois retained their seats. It was known to the convention that the platform was giving the committee a deal of trouble. Frequent reports came from the committee rooms, all to the same effect, that the agreement upon the slavery question was not in sight. The fourth day was spent in angry debate and frequent threats of bolting the convention were heard on all sides. On the fifth day, the committee still unable to agree upon the platform, the matter was submitted to the convention.

The platform. The majority report was an endorsement of the Cincinnati platform which declared that Congress could not interfere with slavery in the Territories; that the territorial legislature had no authority to abolish it in the Territories, nor to prohibit its introduction therein, nor to impair the rights of property in slaves by any legislation. It declared it to be the duty of Congress to protect the rights of property in the Territories. Another resolution favored the acquisition of Cuba. This was the extreme position of Jefferson Davis, the most distinguished leader of the South at the time.

Minority report. The minority report accepted the Cincinnati platform with additional resolutions similar to the

majority report, except those referring to the status of the slave. It declared all rights of property are judicial in character, and pledged the Democracy of the nation to abide by the decision of the Supreme Court in such matters. This report was signed by the members of all the free States except California, Oregon and Massachusetts. They represented one hundred and seventy-two electoral votes, while the majority report represented but one hundred and twenty-seven.

Popular sovereignty in the convention. It was clear from the beginning that the point of dispute was the popular sovereignty policy of Douglas. It appeared that he had staked his political life upon its adoption. Yancey of Alabama led the fight for the Southern policy, which was best stated by Davis: "That neither Congress nor a territorial legislature, whether by a direct legislation or legislation of an indirect and unfriendly character, possesses power to annul or impair the constitutional right of any citizen of the United States to take his slave property into the common territories, and there hold and enjoy the same while the territorial condition remains." It was also asserted that when the territorial government failed to afford such protection the Federal government was bound to do so.

Adoption of the Douglas platform. On the 30th, the convention having been in session since the 23d, the vote on the platform was taken. Butler's amendment to adopt the Cincinnati platform as the convention's platform was rejected by 105 yeas to 198 nays. Then the vote on the minority or Douglas report was called and after strenuous efforts to table it had failed, it resulted in 165 votes in favor and 138 votes against it. Of the 165 votes, twelve were from slave States. Of the 138 votes, thirty were from free States. When it was announced that the platform was adopted, Walker of Alabama read a series of twelve resolutions which purported to be specific instructions to the delegates by the State convention which had selected them to represent the State in the national

convention. He informed the convention that the delegates, unable to reconcile further participation in the convention with their instructions, would withdraw.

Withdrawal of Southern States. Barry of Mississippi was next to secure the floor and proceeded to state, like the Alabama speaker, that their delegation by unanimous agreement would withdraw, and the State would not participate in the further proceedings of the convention; whereupon they left the hall. Louisiana was next to make a like statement, but two of the delegates refused to abide by their instructions. The next State heard was South Carolina whose protest was brief but pointed. Florida was next to follow, Texas followed Florida, to be in turn followed by Arkansas. Georgia asked the privilege to retire for consultation, which was granted. The convention then adjourned for the day. On the following day Georgia was the first to speak, and announced its decision to withdraw. Most of the delegates in withdrawing announced that the State would not be represented inasmuch as no one could assume authority. However, some of the States were represented in the further balloting. The entire loss was only about one-seventh of the whole vote.

Adjournment of convention. Reduced in membership and a degree of order resumed, the convention decided to ballot for a candidate at four o'clock. The two-thirds rule was as usual the occasion for a stormy time. It was finally ordered by the vote of 141 to 112. On the first ballot nine candidates were voted for, with Douglas far in the lead, having received $145\frac{1}{2}$ votes to 107 scattered among eight other candidates. This was a clear majority and a plurality of $103\frac{1}{2}$, since Guthrie, the next highest, had but forty-two votes. It was soon discovered that there was an invulnerable position to Douglas. On the seventh ballot, he reached $150\frac{1}{2}$; with the exception of the thirteenth ballot, when he lost one vote, he maintained his former vote down to the twenty-third, when he reached $152\frac{1}{2}$, the high-water mark. He dropped back one vote and

remained there down to the fifty-seventh ballot. The opposition was scattered, with Guthrie in the lead never reaching higher than $66\frac{1}{2}$. Thus far the opposition had been successful, and now with the delegates worn out, a motion was made to adjourn to meet in the city of Baltimore on the 18th of June. After some discussion, the motion was carried, and the famous Charleston convention, on the 10th day of its session, adjourned to a city farther north.

The Seceders' convention. In the meantime the retiring delegates held sessions in another hall. Bayard of Delaware was elected chairman. It adopted an extreme pro-slavery platform. Enough had been done to declare to the country the purpose of the seceders. They continued their sessions for four days and adjourned to meet the 11th of June in the city of Richmond, Virginia. Representatives from Alabama, Mississippi, Louisiana, Texas, Arkansas, Missouri, Florida, Georgia, South Carolina, Virginia and Delaware took part in the proceedings of the seceders. Indications soon developed that an influence at Washington was giving the seceders moral backing. An address to the convention signed by tweny-one names, principal among which were those of Jefferson Davis, Robert Toombs, Judah P. Benjamin, John Slidell and James Mason, was issued, approving the "lofty manifestation of adherence to principle, rising superior to all considerations of expediency, to all trammels of party, and looking with an eye single to the defense of the constitutional rights of the States." It recommended that the proposed Richmond convention take no action, but await the result of the Baltimore meeting. It was also recommended that the seceding States send delegates to this latter convention, and that the rights of the States, as set forth in the majority report of the Charleston convention, be insisted upon. In case of a failure to secure such rights, the remaining Southern States could join the seceders. On the 11th of June the seceders convened. Eight States were represented and a congressional

district from each State of Tennessee and Virginia. After organization, it adopted a resolution fixing the subsequent meeting on the 21st of June. It then adjourned to await the action of the Baltimore convention. This was in accordance with the Davis program.

Baltimore convention. On the 18th of June the Charleston convention proper re-assembled at Baltimore, with full representations from Maine, New Hamsphire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Maryland, Virginia, North Carolina, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, California and Oregon. Connecticut and Delaware were partially represented. The first sensation was created by the ruling of Chairman Cushing, that only the States which were represented in the Charleston convention at the time of its adjournment should be called. Consequently eight states — South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas and Arkansas — were not included in the roll-call. The Southern States, acting in accordance with the program, sent delegates, but unfortunately some of them had contesting delegations.

Douglas platform adopted. On the fourth day the majority report was adopted by sections. It remained to determine whether the suggestions emanating from Washington would be acted upon.

Conduct of Virginia and other States. This season of uncertainty was not of long duration. Virginia announced the decision of the delegates to withdraw. The second crisis in the Democratic national convention was on. North Carolina followed her neighbor on the north, and was followed in turn by Tennessee, Maryland and California. Delaware, a part of Kentucky, and a part of Missouri followed the withdrawing delegates. The real sensation was reached when the chairman, Caleb Cushing of Massachusetts, withdrew, and cast his influence with the Southern wing of the Democracy. With the chairman went also a part of the Massachusetts delegation.

Work of the convention. This left twenty-five States represented, some by full and some by partial delegations. On the second ballot Douglas received all the votes except 13, but he was far below the two-thirds requirement, which was 202, as the convention was originally constituted of 303 members. He was declared the nominee on the ground that the two-thirds vote meant to apply to those voting in the convention. Fitzpatrick of Alabama was nominated Vice-President, but later he declined and H. V. Johnson of Georgia was nominated. Before adjourning, the convention again resolved that the Supreme Court was judge of territorial rights and its decisions should be respected by all.

Work of the second convention of seceders. The retiring delegates met on the 28th of June, in Baltimore, with representatives from twenty-one States. They proceeded to nominate John C. Breckinridge of Kentucky for President and Joseph Lane of Oregon for Vice-President. The ballot showed $21\frac{1}{2}$ votes of Northern States, as follows: Massachusetts 8, Pennsylvania 4, California 4, Oregon 3, New York 2 and Vermont $\frac{1}{2}$.

Ultimate effect. Thus the most dramatic as well as the most disastrous national convention of the party of Jefferson and Jackson had met and adjourned. Unable to bridge the chasm created by the presence of slavery in America, it hopelessly divided the party it represented. The party went forth to meet a new and vigorous organization, only to go down in defeat from which it did not fully recover in half a century.

The Constitutional Union party. The next party in the field was the remainder of the American or "Know-nothing" party, which had absorbed the small element of the Whigs that had refused to enter either the Democratic or the Republican party. This party now assumed the name "Constitutional Union" party. Its only convention met in Baltimore on the 9th of May, with most of the States represented. It organized by the election of Hunt of New York as chairman. On the preliminary contest it was revealed that the line of

difference was largely geographical and ran with Mason and Dixon's line. The Southern element united upon Houston of Texas, while the Northern element took up Bell of Tennessee. Crittenden of Kentucky, McLean of Ohio, and Everett of Massachusetts each had a following. On the second ballot Bell was nominated, after which Everett was unanimously chosen for Vice-President. The convention adopted a brief statement of principles, the most significant of which was, "The Constitution of the country, the Union of the States, and the enforcement of the laws," as the only political principle of the party.

Prospects of the Republican party. The greatest interest was shown by the country in the approaching Republican convention, which was called to meet in Chicago on the 10th of May. This interest was due in part to the great vigor developed in the campaign of Fremont four years previous. It was recalled that a change of the vote of Pennsylvania and either Indiana or Illinois would have elected Fremont over Buchanan. These three States, upon the slavery issue, were almost sure to be anti-Democratic. Recent elections had repudiated the Buchanan Administration and had struck terror to the heart of the pro-slavery element of the country. Added to this general situation, was the irretrievable schism in the party. All this was pretty well understood at the time of the assembling of the Republican convention. Another element of interest in this convention was the large number of able leaders who had been men of the first rank in their respective parties. Chase of Ohio was known far and wide as the distinguished anti-slavery Democratic leader. His ability was not that of an agitator but that of an able political thinker and statesman.

Seward's candidacy. Seward of New York was the generally recognized leader of the new ideas embodied in the Republican movement. His political ability was of the very first rank. His career both as governor of, and as United

States senator from, his State was brilliant and able. Perhaps no one had perceived the drift of affairs with a clearer vision than he expressed in his "higher law" doctrine and his "irrepressible conflict" speech. In all that emphasized the creed of the new party, Seward seemed the undisputed leader. Before the assembling of the delegates in convention, and up to the very hour of balloting, the Seward candidacy monopolized the hopes of a vast majority of the people.

Lincoln's opportunity. There were many thoughtful men, who, turning over in their minds the probable line of battle and remembering the career of the fearless antagonist of Douglas, were growing into the conviction that Seward could not win, but that Lincoln could. How kindly the fates deal with some mortals! When the possibility of Lincoln's nomination for President was suggested to him, he frankly replied that he did not feel that he was fit for the place. He had looked with some favor upon the suggestion that he might be chosen as candidate for Vice-President. In fact he frequently mentioned himself in that relation. However, his trip East, in 1859, induced him to see the situation in a new light. His remarkable receptions in Ohio, and especially in New York City when he delivered his address in Cooper Union, could not fail to be recognized as signs of his position before the American public. His tour through New England was but a continuation of the same general ovation. There was no doubt whatever that after the trip to New York, Abraham Lincoln was the strongest competitor that Seward would meet in the coming contest.

The Convention in session. The convention met in a temporary frame building erected for the special purpose of this convention by the city of Chicago, called the "Wigwam." It proved to be an admirable arrangement. It admitted the seating of thousands of spectators. In fact the Chicago plans were in keeping with the interest that had already developed in the outcome of the convention. The convention was called to order by Morgan of New York, chairman of the national

Republican committee who named David Wilmot of Pennsylvania for temporary chairman of the convention. This name, so frequently heard for the past fourteen years both in and out of Congress, thrilled the great body as with an electric current.

On the second day the majority rule was reported and adopted and it was decided by 331 to 130 that the majority was to be computed upon the number present. This rule has since been the practise of Republican conventions, instead of the two-thirds rule, the Democratic practise, from the first convention in 1832 down to the present time (1910).

The platform. The report of the committee on resolutions was awaited with supreme interest, as the incidents of the Charleston convention lent unusual importance to the action of this convention in the adoption of a platform. It was believed that this part of the Chicago proceedings would be occasion for some bitterness. This suspicion, however, was unfounded. The vast assembly present at every session seemed stirred with but one impulse — success at the polls. It greeted with uncontrolled enthusiasm the appearance of every distinguished leader. Its enthusiasm was such as is born of unity of purpose, singleness of determination and anticipation of victory. The reading of the platform was punctuated with great demonstrations of approval — significant contrast with the situation at Charleston. The committee was wise in reducing the resolutions to two forms, namely, declarations of the *negative* character followed by those of the *positive* character. The platform led out in a justification of the existence of the Republican party. It declared its devotion to the principles of the Declaration of Independence and the Constitution of the United States. It declared the Union to be the source of the multiplied blessings of the citizens of the United States and renewed the party's devotion to an indestructible Union of the States. It declared against the popular sovereignty theory of Douglas, the Lecompton

policy of Buchanan, the property theory of Judge Taney and his associates, and denied that the Constitution carried slavery into the territories of the nation.

Specific planks. In positive terms it positively declared the authority of Congress to prohibit the further extension of slavery into the Territories, and to deal with it in the Territories where it then existed, on the principle that "The normal condition of all the territory of the United States is freedom." It recognized the principle of State autonomy, by declaring each State free to regulate its own domestic affairs and should not be molested by the Federal government. It demanded the immediate admission of Kansas as a State under her free constitution. Having thus clearly defined its position on slavery, it proceeded to declare upon other questions. It pronounced in favor of the protection policy of raising revenue, the internal improvement policy of liberal appropriations for rivers and harbors, the homestead policy to secure to the actual settler the lands in the West, the construction of a Pacific railroad to connect the two oceans, and some other minor points.

Events preceding the nominations. The platform having been constructed, the real contest took place in the selection of a standard-bearer. It was known that the day would be filled with soul-stirring scenes. Perhaps nothing in American life is so beyond the powers of description as a great national convention of a hopeful political party. And perhaps there is no period of such a convention equal to that which just precedes the presentation of the names of the candidates. The night preceding this day the leaders are busy in their respective headquarters receiving impressions from various sources, and completing plans for the closing scene; while the interested onlooker is either on the streets giving vent to his surplus enthusiasm, or listening to the oratory of an effusive politician. On the assembling of the delegates for the real struggle, to be witnessed by thousands of people representing every station in American life, the scene beggars description.

The real contest. While it was understood that Pennsylvania would present Cameron; Ohio, Chase; New Jersey, Dayton; and Missouri, Bates, it was well known from the first day that the contest would be between Lincoln and Seward. The night preceding the nomination, Greeley, one of the shrewdest observers in the convention, gave up all hope for Bates and telegraphed the *Tribune* that Seward would be nominated. An incident which led to an important result was the seating of the auditors. The Seward people were determined to arouse popular favor for their leader, who, it was believed, had the votes of a sufficient number of delegates to insure his nomination. To this end they organized a mammoth street parade prior to entering the Wigwam for the final test. In the meantime the Lincoln managers counteracted the effect of the Seward demonstration by rushing their followers, by the thousands, into the Wigwam to take advantageous positions, in order to outdo the Seward enthusiasm at the proper time. When the Seward element arrived at the Wigwam and found the seating space already occupied, it was too late to rectify the blunder. The final struggle was therefore to take place in what was practically a Lincoln mass meeting.

Candidates' names presented. When the chairman announced that the naming of the candidates for President was in order, William M. Evarts of New York was recognized by the chair. He said, " I take the liberty to name as a candidate for the office of President of the United States, William H. Seward." The chair then recognized Norman B. Judd, of Illinois, who said, " On behalf of the delegation from Illinois, I desire to put in nomination as a candidate for President of the United States, Abraham Lincoln of Illinois." Dudley, of New Jersey, nominated Dayton; Governor Reeder, of Pennsylvania, Cameron; Cartter, of Ohio, Chase; and Blair, of Missouri, Bates. The wildest enthusiasm followed the seconding of the nomination of Lincoln by the Indiana delegation.

When Michigan seconded the nomination of Seward, the New York delegation arose and set the galleries aflame with a frenzy such as had not yet been heard in the convention. Then Ohio, unrestrained by the fact that Chase was that State's candidate, seconded Lincoln's nomination, which was the signal for another demonstration which fairly eclipsed that given to Seward. When it died down the galleries took it up again and fairly made the building tremble.

First ballot. The first ballot was ordered. The whole number of votes cast was 465; 233 were necessary for a choice. On the first ballot twelve candidates were voted for. All interest centered upon the two men, Seward and Lincoln. As the vote proceeded great enthusiasm greeted the announcement of the names of these men by their respective following. The vote stood: Seward, 173½; Lincoln, 102; Wade, 3; Cameron, 50½; Bates, 48; McLean, 12; Chase, 49; Dayton, 14; Collamer, 10; and Read, Sumner, and Fremont, one each.

Seward's opposition. The most significant fact of the first ballot was that Lincoln received four votes from Cameron's State and eight from Chase's. Amidst the greatest excitement the second ballot was ordered, when Cameron's name was withdrawn.

Second and third. On the second ballot the first wave of enthusiasm that swept the convention was when Ohio gave Lincoln fourteen votes. This was only preliminary to that which enveloped the assembly when forty-four of the Pennsylvania delegates came to the "Rail Splitter from the West." All of Collamer's vote joined the Lincoln vote. At the end of the roll-call the significant fact faced the Seward men, that while they had gained but eleven votes, the Lincoln men had gained seventy-nine. When the third ballot was ordered, the excitement reached that stage of intensity when it shows itself in deep feeling rather than in loud commotion. And as the ballot proceeded the vote of each State was awaited in breathless silence. The drift of the voting could not be

doubted. The convention became almost quiet by the end of the balloting. In the hush of expectation and uncertainty of the close ballot — the full count had to be made before the result could be definitely determined — the convention reached its climax. Before the result of the ballot was announced, Chairman Cartter of the Ohio delegation was on the floor seeking recognition from the chair. He announced that Ohio desired to change four votes from Chase to Lincoln. The ballot had stood: Seward 180, Lincoln 231½, which made the requisite number of Lincoln short 1½ votes, hence the action of Cartter, insuring the nomination of Lincoln. Amidst wildest excitement delegation after delegation changed to Lincoln until his vote reached 354, which was 121 more than the number required to nominate him. Evarts was given the floor, when he proposed that the nomination be made unanimous. It was seconded by Andrew of Massachusetts and was carried in a storm. Never in the history of American politics, either before or since, has this convention been equaled in its quality and quantity of enthusiasm. It touched the extreme points; from the quietness which held thousands of men and women in that silence, disturbed only by the scratching of the pencils in the hands of hundreds computing the result of the ballot, to the commotion like the sweep of the storm, when men and women seemed for the time to forget that they were mere citizens simply beholding the representatives of a portion of the people selecting from their peers a man to bear their standard in the contest for control of the nation's policies.

Hamlin chosen Vice-President. The Lincoln portion of the convention desired the Seward men to name the Vice-President, but the latter declined to do it. Hannibal Hamlin was then nominated on the second ballot, having received 367 votes, while C. M. Clay received 86 and Hickman 13. Before adjournment the convention appointed a national committee consisting of one member from each State, to take charge of the campaign. It then adjourned with cheers for the ticket.

Lincoln's election. The election which followed was no surprise to the political observer. The unfortunate situation of the National Democracy, which grew worse as the election approached, gave small hope to the historic party of Jefferson. On the other hand, Lincoln's candidacy grew with the months. October elections told with certainty the popularity of the Republican cause in the North. All the doubtful States favored the new organization. In the election thirty-three States took part. The result stood in the electoral college as follows: Lincoln, 180 votes; Breckinridge, 72; Bell, 39; and Douglas, 12. The popular vote stood: Lincoln, 1,866,452; Douglas, 1,375,157; Breckinridge, 847,953; and Bell, 590,631. The disparity between the popular vote, on the one hand, and the electoral vote, on the other, is the result of the electoral system of choosing the President. Lincoln received less than a half-million more votes than Douglas, but his electoral vote was fifteen times that of Douglas. Douglas received over a half-million more votes than Breckinridge, while the latter received just six times the electoral vote. While Douglas received more than double the popular vote given to Bell, the latter received more than three times the former's vote in the electoral college.

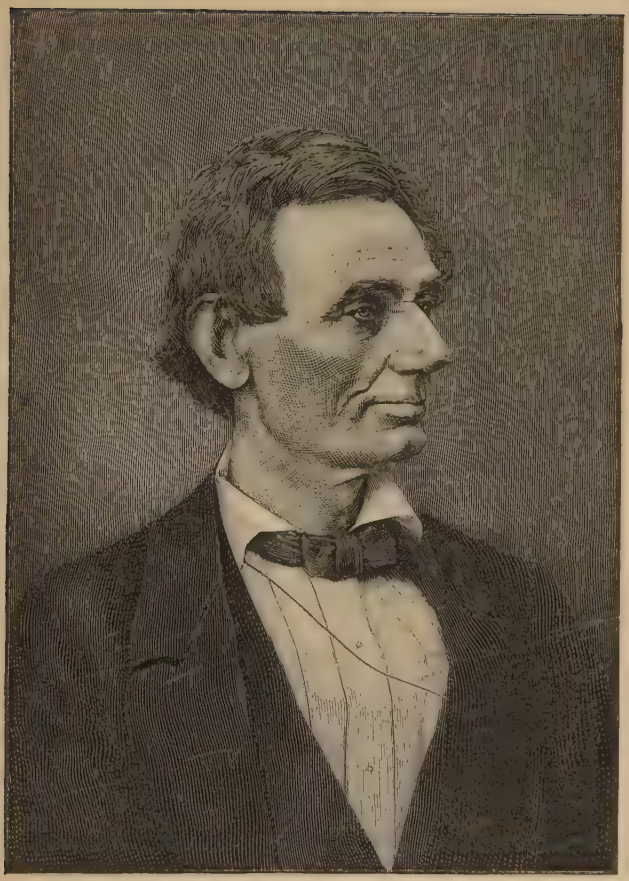
Its real significance. By States, Douglas carried Missouri alone, and three of the seven votes of New Jersey. Bell carried three States: Virginia, Kentucky and Tennessee. Breckinridge carried all the remaining States denominated Southern States, eleven in all. Lincoln carried every Northern State except New Jersey, which divided her vote, giving three to Douglas and four to Lincoln. Although the popular vote is conclusive that it was not strictly a sectional struggle, nevertheless, this selection and the events immediately following it produced the "solid South" and almost a "united North." For a half century this party alignment has more or less prevailed. Recent events have done much to relieve sectional bitterness.

CHAPTER XVI

ABRAHAM LINCOLN, THE GREAT WAR PRESIDENT

Early career of Lincoln. The life of Abraham Lincoln will continue to be one of the chief treasures of American history. To the children of the land, it has the interest of the fairy tale; to the ambitious youth, it is a perpetual spring of inspiration, and to the matured mind, it is a source of supreme delight, born of an appreciation of splendid talents. Of all that long line of worthy great in the United States, Lincoln can rightly claim the primacy. The chasm which separated his beginning in the solitary wastes of the forests, and his ending in the White House, seems bottomless. The achievement was not the mere accident of good fortune but it had its basis on a rational foundation. The sterner obstacles of the pioneer splendidly disciplined his body as well as his mind for the realities of life. His tender nature which put him in sympathy with suffering of all kinds was native to him, and this quality received a decided growth in the discipline of hardships, entailed upon the family upon the frontier. This duality of nature throws light upon his attitude toward the institution of slavery. The artificial distinctions which erect barriers between man and man under the law, had no place in his philosophy. In this respect he was supremely democratic.

His Democracy. In the matter of equality of all mankind in the race of life, he was more democratic than Jefferson. He believed that the Declaration of Independence proclaimed a truth universal, comprehending all mankind. That all men



Abraham Lincoln

are equal in their right to eat their bread in the sweat of the face, was true not because the Continental Congress said so, but because it was written in the consciences of men. This principle was broad enough to take in all men of all races. There is no evidence that Jefferson, in his conception of the Declaration of Independence, included the colored race. The evidence would point otherwise, owing to the existence of slavery, an institution which he greatly deplored. In this respect Mr. Lincoln was a greater Democrat than Jefferson.

His nature. By nature Mr. Lincoln was a Democrat, in the sense of giving to all men a square deal in the race of life. In politics he was a Whig, in the sense that this party endorsed a policy of constructive statesmanship in the development of the great West and the establishment of a fiscal agency in the form of a National Bank, as well as in the development of a system of revenue which he joined Clay in calling the "American system." But the nation's discovery of this remarkable man was not due to policy or to his advocacy of any political theory. His active life was destined to be spent in the newer parts of the country, at a time when the institution of slavery was in its mighty struggle with the forces of freedom, for the control of the vast stretches in the West. No man of public spirit could escape the conflict. In its fury, Lincoln naturally identified himself with the anti-slavery element. His make-up peculiarly equipped him as the defender of the rights of the lowly. He viewed slavery as an evil to be tolerated only because the situation under which it had been planted denied interference.

His attitude toward slavery. While he was a member of the State legislature the friends of slavery had succeeded in passing resolutions of endorsement of the institution. Lincoln entered upon the Journals his protest in which he declared slavery to be founded upon injustice and bad policy. However, he believed the abolition agitation tended to increase, rather than abate, the evil. He claimed that Congress had no power

to interfere with slavery in the States, but that it could control or abolish it in the District of Columbia. However, he advised that no such action be taken except upon the request of the people of the District. His protest recognized the existence of slavery as a necessary evil. Three years later in a public address he said: "Broken by it, I, too, may be; bow to it, I never will. The probability that we may fall in the struggle ought not to deter us from the support of a cause we believe to be just." At this time his feelings against slavery were well defined. He was averse to the methods of the Abolitionist.

Service and congress. Up to the time he became a member of Congress in 1846, his service on the *stump* was in great demand from the Whigs. He had been a student of the Texas annexation project and felt that the defeat of Clay was too high a price to pay for that territory. He opposed the project mainly on the ground that it would involve the United States in a war with Mexico. He also reflected the wish of his constituency on the question of limiting the extension of slavery. His support was given to the Wilmot Proviso. He declared afterward that he had voted no less than forty-two times for the Proviso. He did not oppose the prosecution of the war with Mexico, but he refused to vote for various resolutions introduced into Congress to endorse the policy of President Polk in inaugurating the war. This attitude was later arraigned by Senator Douglas as evidence of a lack of patriotic enthusiasm, a charge which can be explained only on a partizan basis. His political affiliations were due more largely to economic policies than to moral issues such as the slave issue. In the presidential campaign of 1848 he chose to vote for a Whig slave-holding candidate from Louisiana, rather than for a Democratic non-slave-holding candidate from Michigan. However, in 1849, he introduced an amendment to a bill providing for the abolition of the slave trade in the District of Columbia. His amendment sought to prohibit both the slave trade and slavery in the District. The amendment would

have cut off further importation of slaves and provided for the manumission of the slaves within the District by compensating the owners at full value. It further provided that the bill should be effective only when ratified by the people of the District.

The lawyer again becomes a politician. On the fourth of March, 1849, he retired from Congress to take up his law practise, having previously announced his determination not to become a candidate to succeed himself. His practise absorbed his interest, and only the unfortunate repeal of the Missouri Compromise, by the passage of Senator Douglas's Kansas-Nebraska bill, in the name of popular sovereignty which had such peculiar charm for its author, could take him from the court-room to the stump. The imperious manner of Mr. Douglas upon his return home in defense of his popular sovereignty policy called Lincoln to the platform. While the whole country was more or less agitated over the new form the slave issue had taken, Illinois was the real battle-ground. It was in that State that the author of the popular sovereignty theory lived. He was the representative of that State in the United States Senate. Then the State itself was peculiarly situated with reference to the issue. The northern counties were radically anti-slavery, while the southern counties were radically pro-slavery in sentiment. The sentiment of the central counties was about evenly divided.

On the "stump." These conditions rendered the State an ideal battle-ground. The campaign opened in Springfield, in connection with the State fair. Douglas spoke first. The following day Lincoln addressed the people. It is said that he spoke four hours. The ability displayed by him forced upon Douglas the acknowledgment of an opponent worthy of his steel. Lincoln's speech possessed the qualities of terse statement, lucid exposition and logical arrangement, which made him famous in the next decade. Among other things he said: "I hate it (the attempt to spread slavery) because of the

monstrous injustice of slavery itself. I hate it because it deprives our Republican example of its just influence in the world; enables the enemies of free institutions with plausibility to taunt us as hypocrites; it causes the real friends of freedom to doubt our sincerity; and especially because it forces so many really good men among ourselves into an open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence and insisting that there is no right principle of action except self-interest." He declared that the doctrine of self-government was eternally right, but it could not be interpreted narrowly. He said, "When the white man governs himself, that is self-government; but when he governs himself and also another man, that is more than self-government — that is despotism . . . What I do say is that no man is good enough to govern another man without that other's consent." He declared that slavery was founded on principles which are in eternal antagonism with justice, that man could repeal the Missouri Compromise, all compromises, the Declaration of Independence, but he could not repeal the nature of man. His indictment of the Douglas policy was at once terrific and overwhelming.

His candidacy for Federal Senate. Mr. Lincoln's remarkable ability here and elsewhere displayed made him the logical candidate for the Senate, a position which he greatly desired. He had allowed his friends to run him for the legislature in the interest of an anti-Nebraska legislature, and consequently an anti-slavery United States senator. This position he resigned soon after the election, to be free to accept the senatorship; but in the dead-lock Lincoln induced his friends to vote for Lyman Trumbull. This magnanimity on the part of Lincoln made him the unanimous candidate in 1858 to contest the seat of Senator Douglas. It was the speech Mr. Lincoln made in accepting this nomination, on the 17th day of June, 1858, that gave him the wide reputation he so suddenly achieved. Here he declared that Douglas had promised to

put an end to the agitation of slavery by his popular sovereignty scheme; but that the policy had failed to accomplish its end. He then said, "In my opinion it will not cease until a crisis shall have been reached and passed. A house divided against itself cannot stand. I believe that this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved; I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the States, old as well as new, North as well as South." He endeavored to prove that the recent legislation and the Dred Scott decision suggested a conspiracy to extend slavery into the free territory; that the legitimate outcome of the national policy was the extension of the institution into the free States as well as into free territory. He indicted Douglas, Taney, Pierce and Buchanan as the chief parties. He endeavored to show that the lessons of history promised success to the opponents of wider extension of the slave area.

Debate arranged. In July Lincoln sent a letter to Douglas which served as a challenge to discuss the issues of the campaign on the same platform before the same people. Douglas accepted and arrangements were made for some joint debates in various parts of the State.

Lincoln's first speech. Mr. Douglas took Mr. Lincoln's acceptance speech for the basis of his argument. His speech in substance was not different from what he had said at his previous meetings. Mr. Lincoln's first speech was determined by the trend of his opponent's. On the slavery question he said his first inclination would be to colonize the slaves in Liberia. He declared it both impossible and unjust. He was not sure he would free them and keep them as underlings,

as that might not improve their condition. Personally he would not hold one in slavery. He said his feelings would not admit their freedom upon a basis of social and political equality. He thought a system of gradual emancipation could be adopted by the South, but he was convinced the government could not interfere with it in the States. But he insisted that Congress had full power to deal as it liked with it in the Territories. On the question of social and political equality, which Douglas attempted to fasten upon him, he said: "Anything which argues me into his idea of social and political equality with the negro, is but a specious and fantastic arrangement of words, by which man can prove a horse-chestnut to be a chestnut horse." While he freely admitted radical differences in the races, in physical, intellectual, and moral qualities, he declared: "In the right to eat the bread, without the leave of anybody else, which his own hand earns, *he is my equal, and the equal of Judge Douglas, and the equal of every living man.*" Mr. Lincoln quoted Henry Clay as once saying of a class of men who would stifle all impulses to ultimate emancipation, that they must go back to the era of our independence and muzzle the cannon which thunders its annual joyous return; they must blow out the moral lights around us; they must penetrate the human soul and eradicate there the love of liberty; and then and not until then could they perpetuate slavery in this country. He offered this in proof of his contention that slavery was in the course of ultimate extinction. Later in the debates he cited evidence that at the time of the Federal convention, the belief was wide-spread that slavery could not last beyond a few years. Its extinction was desired by the leaders of most of the States, as manifested in their utterances as well as in their enactments in the legislatures, their various conventions and Congress. As examples of the latter he cited the Ordinance of 1787 and the Missouri Compromise which secured the major portion of the country to freedom.

To the queries asked him by his opponent, he replied in full exposition of his position on the sensitive issue. In regard to the Fugitive Slave Law, which was the immediate cause of frantic agitation in the North, he said he did not hesitate to admit that under the Constitution the people of the Southern States were entitled to the enactment of such a measure. He thought it could be done without so great offense to the people of the North by omitting some of the objectionable features, which he felt should be done.

Position on public policy. In reference to the question whether he would favor the admission of any more slave States into the Union he said: "I state to you very frankly that I would be exceedingly sorry to be put in a position of having to pass upon that question. I should be exceedingly glad to know that there would never be another slave State admitted into the Union; but I must add that if slavery shall be kept out of the Territories during the territorial existence of any one given Territory, and then the people shall, having a fair chance and a clear field, when they come to adopt their constitution, do such an extraordinary thing as to adopt a slave constitution, uninfluenced by the actual presence of the institution among them, I see no alternative, if we own the country, but to admit them into the Union."

On abolition in the District of Columbia. In regard to the abolition in the District of Columbia he said: "In relation to that I have my mind very distinctly made up. I should be exceedingly glad to see slavery abolished in the District of Columbia. I believe that Congress possesses the power to abolish it. Yet as a member of Congress I should not, with my present views, be in favor of *endeavoring* to abolish slavery in the District of Columbia, unless it would be upon these conditions: first, that the abolition should be gradual; second, that it should be on a vote of the majority of the qualified voters in the District; and third, that compensation should be made to unwilling owners." He declared upon these three

conditions he would be glad, in the language of Clay, "to sweep from the Capital that foul blot upon our nation."

Power of Congress. Mr. Lincoln made himself clear upon the issue. He felt that Congress had no constitutional power to interfere with slavery in the States where it already existed. In the Territories it had complete control, and he pronounced himself unalterably opposed to the further spread of the institution in the Territories. In the District of Columbia he favored abolition upon specified grounds. In regard to the admission of new States as slave States, he was frank to say he would not favor it, but might be compelled to vote for such admission upon constitutional requirements. In all this he displayed an eternal warfare against slavery, but obedience to legal enactments.

His weakness. The point of weakness in his position in the debates was his attitude toward the Dred Scott decision. He frankly acceded to the decision as final in the case of Dred Scott but as frankly denied that it should be respected as the rule governing the Territories. While he admitted that the Court substantially said to the slave-holder that he could take his slave into new territory, and hold him there, he insisted that the decision was not reached regularly. It was made in a divided court, by a bare majority, and the majority did not quite agree in the reasons for so deciding. It was made so that the avowed supporters disagreed with one another in the meaning of it. It was based upon a mistaken statement of fact, that the "right of property in a slave is distinctly and expressly affirmed in the Constitution." From these reasons he refused to be governed by its force as a rule of political action. He declared himself as follows: "I go in for the reversal of that decision." He quoted Jackson who claimed the right to enforce the law as he interpreted it, and not as some one else interpreted it for him. He also intimated that Congress had the authority to reconstruct the Supreme Court, and cited the conduct of Senator Douglas whose title

to judge was secured in the State by such a reconstruction in Illinois.

His political theory. It must be admitted that while the people could reach the Judiciary in this manner and could reverse its decrees, it would be a source of danger to subject the courts in times of great excitement to the caprice of a popular majority. Herein Mr. Lincoln was far more Jeffersonian than Hamiltonian. Such utterances would have been pronounced heresies by Webster. Thus far in theory Lincoln was Democratic, although he did not vote with the party bearing that name. He believed in State rights so far as to be exempted from interferences by Congress with their domestic matters. He did not believe in the principle to the extent of the State's interference in matters of general concern. On the slavery question, which overshadowed all others, he had come to stand upon a well defined platform of restriction. He demanded that slavery be placed where the fathers had placed it — in the course of ultimate extinction. He had come to the point where he pronounced it a wrong that dared not be augmented.

Specific position on slavery. In his last address with Douglas he said: "That (Is slavery right or wrong?) is the issue which shall continue in this country when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles — right and wrong — throughout the world. They are the two principles that have stood face to face from the beginning of time, and will ever continue to struggle. The one is the common right of humanity, the other the divine right of kings." He thus forced the leader of Democracy into the embarrassing position of being compelled to remain silent, or offend either his Southern friends or his Northern, or perhaps both. He had drawn the lines so sharply that an answer either way was fatal to the ambitions of his opponent. The position had driven the Democracy to the defensive.

Campaign continued. Mr. Lincoln continued the fight even after he had been defeated for the Senate. In 1859 he made two masterful speeches in Ohio, and in the opening of 1860, one in New York. The latter is the strongest exposition of the issue between the parties of that time now extant. In theory it was democratic, as it pleaded for equal rights under the law. The new Republican party had taken its stand against further extension of slavery, in accordance with the views expressed by Lincoln. After his New York address he was looked upon by many as the logical candidate for the presidency on the ticket of the Republican party whose principles so closely coincided with his own. Here, then, was to be inaugurated to the presidency a man whose fundamental principles of equal rights to all were democratic, and whose success was achieved in a struggle to compel recognition of those rights against the Democratic party. He had never been a Democrat in the sense of having voted with the party of that name; his affiliations were with the Whigs down to his campaign with Douglas in 1854. Upon the organization of the Republican party, he became one of its greatest representatives, later its greatest leader, and its first President. Strangely it fell to him to make the greatest test of the Hamiltonian theory and the Websterian dogma of constitutional supremacy, against State Sovereignty and its corollary Secession. In this test he displayed no scruples. His mind easily comprehended the needs of the governing function and its necessary powers. His first official utterance revealed this fact. His inaugural address was mild but decisive. It was a clear statement upon all the questions of the hour. He made it clear that he had no intention to interfere with slavery in the States; no wish to do so, and no constitutional authority if he had such inclination. He wished it understood that the Fugitive Slave Law would be enforced so long as it was on the statute books, but he took a decided position against the further extension of slavery into the newer regions of the country.

His idea of the Union. His theory of the Union was expressed as follows: "I hold that, in contemplation of universal law, and of the Constitution, *the Union of these States is perpetual*. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our national government, and the Union will endure forever." On the theory of Calhoun that the Constitution is a compact, a mere agreement, Lincoln asked to know how such a contract could be peaceably set aside without the consent of all. "One party may violate it, break it, so to speak; but does it not require all to lawfully rescind it?" He argued historically that the Union could not be lawfully disrupted. He declared that no State on its now motion could lawfully get out of the Union; that all ordinances to that effect were legally void; and that acts of violence in any State against the authority of the United States were insurrectionary or revolutionary. He then announced his intention to possess the property and places belonging to the United States, and to collect the duties and imposts. Beyond what was necessary for these objects there would be no invasion of the States.

New problems involved by Civil War. The attack of Fort Sumter necessitated action, and Lincoln immediately issued his first proclamation calling forth the militia of the several States to the number of 75,000 to protect the Capital and to enforce the laws of the land. From this moment Mr. Lincoln gave his best thought to the problem, how to preserve the Union. From the slavery question he turned to that vastly more important one, how shall the Union be preserved and the government perpetuated? The exigencies of war compelled enlargement of the executive prerogative. On the day of the fall of Sumter he issued a call for a special session of Congress to meet on the fourth day of July. In a special

message to this Congress he reviewed the events which led to the call for troops. He said, "They have forced upon the country the distinct issue, immediate dissolution or blood." He continued, "It presents to the family of man whether a constitutional republic or democracy – a government of the people by the same people — can or cannot maintain its territorial integrity against its own domestic foes." He continued, "It forces us to ask, Is there in all republics this inherent weakness? Must a government of necessity be too strong for the liberties of its own people, or too weak to maintain its own existence?"

His conception of executive prerogative. In the meantime the President suspended the writ of *habeas corpus*. His right to do so was questioned on the ground that it was a legislative function. He maintained that it was an executive function and the defense he made revealed the acute mind of the President under a new crisis. While he had been an apostle of liberty, it had ever been such liberty as well regulated order secured. His argument against State Sovereignty reached as high rank as that of Webster. "The States have their *status* in the Union, and they have no other legal *status*. If they break from this, they can do so only against law, and by revolution. The Union and not themselves procured their independence and their liberty. . . . The Union is older than any of the States, and in fact it created them as States. Originally some dependent colonies made the Union, and in turn, the Union threw off their dependence for them and made them States, such as they are." He argued that while each State has powers and rights reserved to it, these powers and rights did not include the power to destroy the Union. In combating Secession as a constitutional right, he argued the injustice of holding the national government for the debts contracted on behalf of the States. He cited the cases of new States, as Florida and Texas, the possession of which entailed a great outlay. Justice could not permit these

States, within fifteen years from the time they had been admitted at a great expenditure, to withdraw and avoid further burdens. If one State may secede, others may secede. Repudiation of obligations is the legitimate outcome of such a doctrine. He insisted that the doctrine of Secession rendered self-government impossible, as it substituted anarchy for government.

The force of his oath. The exigencies of the situation compelled a broad construction. To the numerous good men in the North who preferred peaceful Secession to war, Mr. Lincoln replied that he could not maintain his oath to preserve the Constitution, if he permitted the States to go. As to his authority to employ the necessary power in a constitutional way to enforce the laws, he had no doubt. To the many who protested that he had no power to coerce a State he replied that the Constitution guarantees to every State a Republican form of government. But if a State may lawfully go out of the Union it may certainly discard this form " so that to prevent its going out is an indispensable means to the end of maintaining the guaranty mentioned; and when an end is lawful and obligatory, the indispensable means to it are also lawful and obligatory." This broad construction was employed by Hamilton in his argument against inserting a bill of rights in the Constitution. It was also employed by Marshall in the McCulloch versus Maryland case. It was a rule of interpretation of Webster, and since the war it has become the law of constitutional interpretation of the Federal courts.

His message on slavery. The persistence with which the Southern Confederacy prosecuted the war was a constant surprise to the Northern leaders. Mr. Lincoln, recognizing this persistence and the attachment of the South to her institution of slavery, thought to persuade the disaffected States that their persistence would inevitably involve slavery and result in its ultimate destruction. On the 6th of March, 1862, he recommended to Congress "that the United States, in

order to co-operate with any State which may adopt gradual abolition of slavery, give to such State pecuniary aid, to be used by such State, in its discretion, to compensate it for the inconvenience, public and private, produced by such change of system." This resolution passed both the House and the Senate. As its effectiveness depended upon the Southern States it did not avail anything. It still indicated an intention on the part of the national government not to interfere with slavery within the States. On the 9th of the following May, General Hunter having previously proclaimed all negroes in Georgia, Florida and South Carolina free, the President refused to confirm the order, reserving to himself authority in such matters. He referred to the former resolution recommending gradual emancipation on a compensation basis and appealed to the people to calmly consider the resolution. He closed with a plea that the South embrace the opportunity, that the future may not have to lament that it was neglected.

War inconsistent with continuance of slavery. Mr. Lincoln's penetrating judgment clearly discerned the incompatibility of a War of Rebellion and a continuance of the institution of slavery. All the forces in opposition to Secession would naturally crystallize against the peculiar institution. He perceived this situation. To avoid the inevitable loss to the border slave States which remained loyal to the Union, and to the loyal men in the States which had seceded, he urgently requested them to consider the wisdom of accepting the gradual emancipation policy. The reticence of the States in interest caused the bill to sleep in the committee's possession. On the 12th of July, 1862, the President signed a bill prescribing as a penalty for persons guilty of treason, the confiscation of their slaves. The same law authorized the President to employ persons of African descent to aid in the suppression of the Rebellion in the way his discretion might suggest. The broad construction of the Constitution entailed upon the Executive in the prosecution of the war, was freely employed. He

appointed military governors for the border States with instructions to protect the loyal persons within the States, and recognize them only as entitled to a voice in the affairs of the State.

Emancipation sentiment in the North. With the progress of the war, great clamor arose in the loyal portion of the nation for the emancipation of the slaves. It was readily conceded that slavery was the prime cause of the war, and many argued that to tolerate the evil in the face of an insurrection conceived in its perpetuation, was tempting Providence. Mr. Lincoln had been given the power to free the slaves of all who were engaged in rebellion. The impatience with his tardiness to deal summarily with the subject in accordance with his clearly defined authority, called out severe criticism from certain quarters. The President's position was set forth in his reply to Horace Greeley's criticism, published in the New York *Tribune* under date of August 19, 1862. He said: "As to the policy I seem to be pursuing, as you say, I have not meant to leave any one in doubt. I would save the Union. I would save it in the shortest way under the Constitution. The sooner the national authority can be restored, the nearer the Union will be the Union as it was. If there be those who would not save the Union unless they could at the same time save slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time destroy slavery, I do not agree with them. My paramount object is to save the Union, and not either to save or destroy slavery. If I could save the Union without freeing any slave I would do it. If I could save it by freeing all the slaves I would do it, and if I could do it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do not believe it helps to save the Union. I shall do less whenever I believe that what I am doing hurts the cause, and I shall do more

whenever I believe doing more will help the cause. I shall try to correct errors when shown to be errors and I shall adopt new views so fast as they shall appear to be true views. I have here stated my purpose according to my views of official duty, and I intend no modification of my oft-expressed personal wish, that all men everywhere could be free." This reply was conclusive as to the President's attitude in respect to slavery. In reply to a deputation of ministers from all the churches of Chicago, praying for emancipation, among other things he said: "What good would a proclamation of emancipation from me do, especially as we are now situated? I do not want to issue a document that the whole world will see must necessarily be inoperative, like the Pope's bull against the comet. Would my word free the slaves when I cannot even enforce the Constitution in the rebel States? . . . Understand, I raise no objections against it on legal or constitutional grounds, for, as Commander-in-chief of the army and navy, in time of war I suppose I have a right to take any measure which may best subdue the enemy." He admitted that slavery was at the root of the war, that he had authority under the Constitution to deal with it, that his own inclinations were toward freedom for all men, but "constitutional government is at stake." He continued, "Whatever shall appear to be God's will I will do." This was said on the 13th day of September.

Emancipation as a war measure. On the 22d his famous Emancipation Proclamation was announced. This decree gave notice to the States in rebellion that all slaves held within the States or parts of the States in rebellion, on the first day of January, 1863, should be free. It also informed the slave States not in rebellion that the Executive favored compensation to all holders of slaves therein for the emancipation of their slaves. On the first of January, 1863, the President issued his final proclamation, emancipating the slaves in the rebellious States so far as it could be done by Executive decree. Two years later an amendment to the Constitution abolished slavery

throughout the land. Mr. Lincoln is justly styled the great Emancipator; however, it should be understood that this title is an incidental one. While he was the nation's greatest representative of equal rights to all and special privileges to none, in a philosophy so broad that it comprehended men of all color, yet this title was achieved by an act stimulated by the belief that the act would be conducive to the preservation of the Union. This conviction was due to at least two causes: (1) his attachment to the Union and his belief that in its preservation were the destinies of a great part of the human race; and (2) his respect for his oath which he had taken to preserve the Union. These two considerations moved him to emancipate the slaves on the basis of a war measure.

Democratic opposition to extension of executive prerogatives. The exigencies of a Civil War necessitated the exercise of regal power. The extension of the executive function was imperative. The new relations created by the war demanded new applications. The vigorous prosecution of the war necessitated frequent infringement upon personal liberties. Frequent arrests were made, such as that of Merryman of Baltimore and Vallandigham of Ohio, who were dealt with summarily and imprisoned. These arrests were heralded as open violations of the Constitution. Also the writ of *habeas corpus* was suspended by executive decree, an act inflaming many persons who felt that the President was approaching despotism. The enlarged authority given into the hands of army officers was held up as evidence of despotism. This opposition was voiced in the resolutions adopted in Chicago, in August, 1864, by the Democratic party which had met in national convention to select a candidate in opposition to Mr. Lincoln. It was declared that, "Under the pretense of a military necessity, or war power higher than the Constitution, the Constitution itself has been disregarded in every part, and public liberty and private right alike trodden down. . . . And they (the Democratic party) hereby declare that they consider

that the administrative usurpation of extraordinary and dangerous powers not granted by the Constitution, the subversion of the civil by the military law in States not in insurrection, the arbitrary military arrest, imprisonment, trial, and sentence of American citizens in States where civil law exists in full force, the suppression of freedom of speech and of the press, the denial of the right of asylum, the open and avowed disregard of State rights, — are calculated to prevent a restoration of the Union and the perpetuation of a government deriving its just powers from the consent of the governed." In the prosecution of the war the President professed to act within his constitutional bounds. His many utterances reveal his concern on this point. He admitted the exercise of powers was necessarily broader in times of war than in times of peace, but he insisted that what was done was warranted by the Constitution as war measures.

Hamiltonian interpretation to secure Jeffersonian liberty. Thus, while he represents the highest reach in the claims of liberty, and as such is specifically Jeffersonian in that of which Jefferson stood as the great exponent, yet he extended the executive function farther than any man who has occupied the presidency. In this extension he claimed to be within constitutional limits. In this way he stands in actual accomplishment as the greatest representative of authority in government, and is distinctively Hamiltonian. It was left to him to preside at the head of the government at the time when the final test was to be made in political theory. Slavery furnished the issue. The election of Lincoln on a platform pledged to confine it where it then existed, was the occasion. Eleven slave States professing to stand upon the principles of State Sovereignty, which they declared were Jeffersonian, and which had been ably defended by Calhoun, decided to make the test. As a corollary of this dogma of State rights they pretended to exercise their constitutional right to withdraw from the Union. All this was done in the interest of non-

interference with the institution of slavery. Thus they demanded the right to exercise their liberty in perpetually denying it to the blacks. Here is where the political theory of the Southern leaders broke down. On the other hand, the Republican party in its efforts to limit slavery, believing that it was in the course of ultimate extinction, extended the functions of government to the prosecution of the war to a successful end. This called for the broadest interpretation of the Constitution as announced by Hamilton, Marshall, Webster, Chase, and to-day by the entire Judiciary of the Federal government.

The normal distinction of the parties. This position of broad, as against strict, construction made a rational issue between the Republicans and the Democrats. The latter as the opposition party necessarily became Strict Constructionists, as against the party in power which as naturally became the Broad Constructionists. The Republican party therefore became constructive, while the Democratic party for the same reason became negative. The remedy for the liberal construction of the Constitution is invariably the dogma of State rights; hence the attitude of the Democratic party upon that question. The necessary function of the party in power, the liberal constructionist, is achievement, authority to accomplish; hence the attitude of the Republican party toward constitutional supremacy. The Republican party represented the Hamiltonian theory, and was therefore the successor of the Whig party, which had succeeded the Federalist party. The Democratic party still represented the Jeffersonian theory, which could claim, with slight deflections, consistency much of the time since the days of its founder, with the exception that when it was in power it employed the broad construction view of the Constitution, an example set by Jefferson himself from 1801 to 1809.

Lesson of the Civil War. The prosecution of the war to a successful end has been regarded, and rightly so, as one of the

most stupendous facts in the history of the world. It was a test of Republican government. The wisest thinkers and closest observers of political science in Europe confidently predicted the failure of the American attempt at self-government, and when the nation was to pass into the fires of civil war, they pointed to it as the fulfilment of their prediction. The contention of the Southern States appealed to many people in Europe as just. The exposition of the causes of the war indicated that the dispute, aside from the slavery question, was a mere difference of opinion upon the Constitution. To many this difference was too slight to justify a war to decide it. In the midst of the country many leading men wished the issue to be peaceful dissolution. Some believed the slave States could govern themselves better, and that the nation would be better off without them. Much pressure was exerted to induce Mr. Lincoln to avoid the horrors of war by allowing the States to go in peace on the ground that there was no constitutional authority to suppress an insurrectionary State. To all such representations Mr. Lincoln had but one answer. His oath could not be respected by allowing disaffected States to dissolve the Union. He believed the preservation of the Union as it was before the war was fraught with countless blessings, and that its dissolution would be the nightmare of the nation. To no other man did dissolution appear in such appalling form. To the perpetuity of the "government of the people, by the people, and for the people," he gave his all. No constitutional scruples deterred him in the furtherance of this cause.

Lincoln's fitness for the head of the nation. Abraham Lincoln was admirably fitted by nature to guide the nation in its conflict. His rare talents commanded the respect of the highest, and his kind heart won the support of the lowest. His remarkable reach in matters of statecraft was an increasing surprise to the people of two continents. His masterful manner of conciliation in which he brought seemingly irrecon-

cilable elements together, without loss to them of either dignity or stability, was one of the results of his enduring qualities of mind. His magnanimity enabled him to receive the severest criticism unruffled, if the criticism were backed by reasons, and thank the critic for it. His balance of mind enabled him to plead for the emancipation of the negro, but to stay the necessary decree until the public mind had reached the proper stage of moral conviction. His penetrating genius enabled him to deal with the multiplied complications entailed by civil war, in such a manner as to win respect from those who differed from him. His candor was the connecting link between him and the people at large. Although he was without the glamour of battle scars and was in the public eye but for a short time, no man since Jackson could boast of such a personal following. His abiding faith in the people was one of his cardinal qualities of strength. Abraham Lincoln will be remembered as the Emancipator, and rightly so. But when measured by the standard of great works, he will be remembered as the great War President, under whom the nation successfully emerged from Civil War, the result of which decided against the right of Secession. In the light of history, the Preserver of the Union is perhaps the proudest title that could be borne by an American.

CHAPTER XVII

EFFECT OF CIVIL WAR ON POLITICAL PARTIES

Effect of the war. The partizan contest of 1861 revealed great confusion in party organization. The all-absorbing slavery question destroyed old party affiliations, and speedily tended to mere sectional strife. The fears of Washington that party strife might degenerate into sectional jealousies were about to be realized. The old Whig party, although Hamiltonian in theory, always drew support equally from all parts of the country.

The Whig, a national party. In 1832, in its first presidential campaign, it carried five States: Kentucky and Maryland from the slave section, and Massachusetts, Connecticut and Rhode Island from the free section. In 1836 it carried ten States equally divided between the sections: Massachusetts, New Hampshire, Rhode Island, Ohio and Indiana in the North, and Kentucky, Tennessee, Maryland, South Carolina and Georgia in the South. When Harrison was elected in 1840 he received the votes of eleven States from the North, and seven States from the South. In 1844, when Clay was defeated by Polk, the Whig party carried eleven States: five from the South and six from the North. In 1848, when General Taylor was elected, he carried fifteen States: eight from the South and seven from the North. In 1852 General Scott, the Whig candidate, carried but four States: Kentucky and Tennessee from the South, and Massachusetts and New Hampshire from the North. From the first campaign of the old Whig party in

1832 to its last in 1852 (it never carried a State after the latter date) it drew its strength from all sections. The new Republican party, responding to the call of the moral sense of the nation against the extension of slavery, took on at once a sectional character. In view of the issue involved this tendency was inevitable. Upon this basis Douglas made his valiant fight against Lincoln in 1858. He strenuously declaimed against the dangers which Washington feared.

Slavery distinctly sectional. The new party rapidly absorbed the anti-slavery sentiment of the country, which resulted in the unification of the elements opposed to the further spread of slavery. This condition naturally made an issue between the slave and the free States. It foreshadowed that later condition deplored by all good citizens, the "solid South" against the "united North." The dominant element in the slave States was Democratic, which claimed the right of constitutional protection to slavery. There were also numerous Whigs in the slave States whose economic views differed from those of their Democratic neighbors but whose local pride and interest caused them to unite with the dominant element in the fight. There were also in those States many American party men whose origin was a revolt against certain tendencies of the Democratic party, but who, on the sensitive question of slavery, overcame their traditional opposition and joined the Democratic forces in the slave States. In the North there was a like confusion. There were a few Whigs and Americans who refused to unite with the dominant anti-slavery organization, but they were comparatively few.

Sectionalism of 1856. In the presidential campaign of 1856 the first evidence of sectionalism became manifest. The Democratic party carried eighteen States, including every slave State except Maryland. That State was carried by the American in combination with the Whig party. The Democratic party also carried five Northern States: New Jersey, Pennsylvania, Indiana, Illinois and California. It received

a popular vote of 1,838,169, of which 621,879 came from the slave States. The same States gave Fillmore, the American candidate, 479,892 votes. The same States gave to Fremont, the Republican candidate, only 1,194 votes. He received not a single vote from any one of the eleven States which afterward joined the Southern Confederacy. On the other hand Fremont carried eleven States, all from the North. He received a popular vote of 1,341,264, all of which, except the 1,194 votes before mentioned as coming from the slave States, came from the free States. The vote shows that the North and South cast about the same number of votes for Fillmore, who represented the conservative element opposed to the agitation of the slavery question. But upon the main issue the South went solid for its interests, while the North divided between Buchanan and Fremont, giving the latter 120,000 more votes than the former.

In 1860. In 1860 the conservative element fell short about 300,000 votes in the popular count, but it carried three Southern States: Virginia, Kentucky and Tennessee. The division in the Democratic party, dividing the vote between two candidates, represented a sectional division. The North gave Breckinridge 274,122 votes, while the South gave to Douglas 163,375 votes. The South gave Breckinridge 573,831 votes, while the North gave Douglas 1,211,782 votes. On the other hand the South gave Lincoln 26,440 votes, of which 17,028 came from Missouri, while the North gave him 1,840,012.

In 1864. In the presidential contest of 1864, in the midst of the war, only twenty-five States participated. The eleven seceding States took no part. Lincoln carried all the States participating except three: Kentucky, Delaware and New Jersey. In 1868, under the Reconstruction régime, all the States participated except Virginia, Georgia and Louisiana, which had not then accepted the conditions of Reconstruction laid down by Congress. Grant carried all the States but eight, including Florida, Alabama, Arkansas, Tennessee, South

Carolina, North Carolina and Missouri. Seymour carried eight States, including Oregon, New York and New Jersey. The other five carried by him were States that had been slave States.

Since the war. In 1872 General Grant received the majority vote of all the States except eight. The States carried by him included Mississippi, Alabama, Florida, South Carolina, North Carolina, Virginia and Delaware. Greeley having died before the meeting of the electors, the Democratic electors scattered their votes. By 1876 the Democratic party had secured control of most of the States which had seceded and which under the Reconstruction régime had given most of their votes to the Republican party. In the latter year the Democratic party clearly carried all the States which had comprised the Confederacy, except South Carolina, Florida and Louisiana. In these States there arose a dispute which was afterward settled by the Joint Electoral Commission in favor of the Republican candidate. From that date down to the present time (1906) the South has held solid for the Democratic party, except in the Silver campaign of 1896, when Delaware, Maryland and Kentucky went for the Republican candidate, and in 1900 when Delaware and Maryland again went Republican.

State rights in the South. While the South had ever been the seat of the State rights theory, its situation in relation to the slave issue augmented the importance of its recognition of that theory. While the cause of the war was substantially in the status of the slave, its real cause was in the question whether or not a State could secede. The question became organic at once. The traditions of the Democratic party naturally allied it with the State rights theory of the South, but the great bulk of the party refused to recognize the theory to the extent of the right of a State to withdraw from the Union, as claimed by the radicals of the South.

Against this extreme theory the great bulk of Northern Democrats offered resistance upon the field, while, on the

other hand, they declined to support many of the policies of the Republican party whose theory they believed extended too far toward centralization.

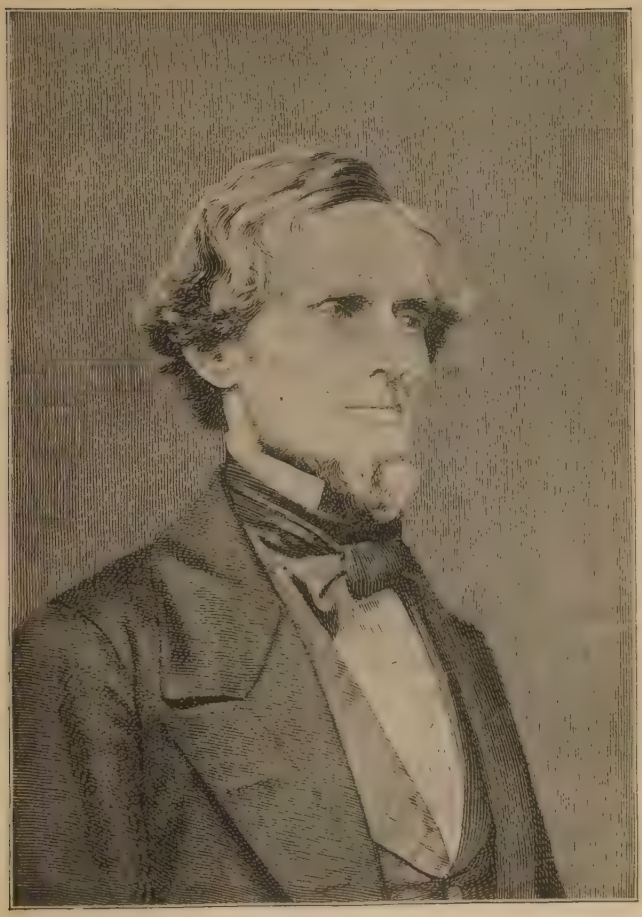
Slavery becomes a partizan question. The Republican party had no history and therefore no traditions, save as it was regarded as the successor of Whig traditions and therefore representative of the Whig principles which were Hamiltonian. The growth of the Republican party was determined by an issue, not by a theory of government, except as was suggested by the issue. Its origin was in response to a demand in the North to limit the extension of slavery. This sentiment was strong enough to threaten the Democratic party with deposition at once. The issue was made up. The Republican party opposed the further spread of slavery. The Southern wing of the Democratic party demanded constitutional protection, the same as granted to other species of property. The Democratic party, proper, attempted to reach a compromise by agreeing to allow the people of the State or Territory to decide the question for themselves. The "popular sovereignty" scheme failed to satisfy the radical wing of the Democracy in the South. The years 1858, 1859 and 1860 furnished abundant evidence that the extremists of the South would not follow the lead of Douglas. This sectional dissension fed the Republican ranks as it weakened the Democratic ranks. The situation disrupted the party and it went before the country in 1860 with two candidates, making it possible for the Republican candidate to receive a majority of the electoral votes and secure the election without receiving a single electoral vote from the Slave States. Thus slavery gave rise to a new political party, disrupted the party that had attempted to protect it, occasioned a sectional contest and laid the foundations for a solid South and a united North.

Election of Lincoln and Secession of the States. Abraham Lincoln was elected President on the sixth of November, 1860. His inauguration was on the following fourth of March. On

the twentieth of December, 1860, South Carolina passed the Ordinance of Secession, declaring itself no longer a part of the Union. One month later, on the twenty-first of January, a dramatic scene was enacted in the United States Senate Chamber when the senators from all the States except South Carolina were present. Those from Florida, Alabama and Mississippi withdrew from the Senate.

Confederate States of America. On February fourth, 1861, the seven States which had seceded, held a convention at Montgomery, Alabama. Four days later it adopted a provisional constitution and on the following day elected Jefferson Davis president and Alexander Stephens of Georgia vice-president. On the eleventh of March the permanent constitution was adopted. With slight exceptions this instrument is in the phraseology of the Federal Constitution, except where the altered circumstances necessitated a change. Its preamble omitted the "general welfare" clause, which had been a nightmare to the Strict Constructionist. The slight exceptions had reference to the points in dispute. The framers desired to leave no room for dispute. The doctrine of State Sovereignty was expressly declared. It asserted protection of slavery, but forbade the slave-trade. It denied the power to establish a protective tariff, and forbade the adoption of an internal improvement policy. These items had been opposed by the slave States since the days of the younger Adams. The constitution followed the English custom of giving Cabinet members a voice in legislation, by permitting them to speak to either House of the Confederate congress. It made the presidential term six years, and forbade a re-election. The constitution was not submitted to the people of the States for ratification, but to conventions in each State.

Certainty of war. Thus two weeks before Lincoln was inaugurated, the Confederacy was established. On the twelfth of April, Fort Sumter was bombarded. On the fifteenth, Lincoln called for troops. Four more States joined the seven



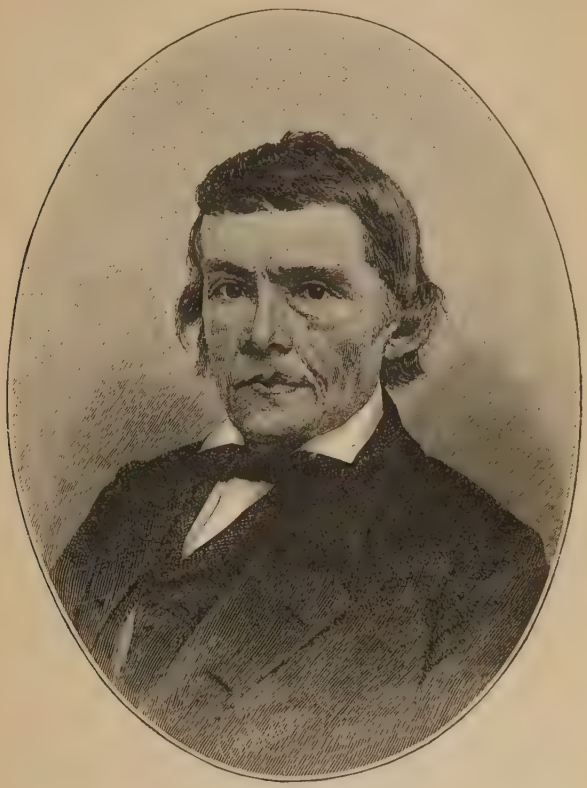
JEFFERSON DAVIS

in Secession: Arkansas May 6, North Carolina May 20, Virginia May 23, and Tennessee June 8. The contention over rival political theories was at last transferred from the council chamber to the battle-field. War was chosen as the final test of constitutional interpretation. This was continued from April 12, 1861, the bombardment of Fort Sumter, to April 9, 1865, the surrender of Lee at Appomattox.

Its extent. During the war there were at least two and a quarter million soldiers in the field. There were over three hundred battles fought which are recorded as sanguine engagements. The loss of life from various causes on both sides approximated six hundred thousand. The cost in money baffles all figures. The slave property alone was estimated to be at least $2,000,000,000. The loss due to the suspension of production will not admit of estimate. All this was to determine the correct interpretation of the Federal Constitution, in a dispute between the advocates of State Sovereignty on the one hand, and those of constitutional supremacy on the other. The prosecution of a war to suppress a rebellion necessitated an enlargement of the constitutional supremacy doctrine, a fact readily accepted by Lincoln.

The Cleveland convention. There was a considerable element in the North which could not adjust its theories of abolition to the Administration's policy of inactivity on the slavery question. These elements in Lincoln's own party crystallized in a convention of three hundred delegates, held in Cleveland on the 31st of May, 1864, to express their opposition to the President and his policy. The call of the convention denounced the administration of Lincoln as "imbecile and vacillating." It characterized his conduct of the war as "treachery to justice, freedom, and genuine democratic principles, in its plan of reconstruction, whereby the honor and dignity of the nation have been sacrificed to conciliate this still existing and arrogant slave-power," etc. The immediate extinction of slavery was demanded by them throughout the

nation by congressional action. Both Wendell Phillips and Frederick Douglass sent letters to be read. The convention set out its principles in a brief platform of thirteen resolutions. They demanded the preservation of the Union, the observance



Alexander H. Stephens

of the Constitution, and the suppression of the rebellion without compromise. They demanded that the rights of free speech and a free press and habeas corpus should be held inviolate. They demanded an amendment to the Constitution abolishing slavery, and a guaranty of equal rights to all

before the law. They declared in favor of the single term for the presidency, and the election of President by a direct vote of the people. They further declared that Reconstruction of the rebellious States belonged to the people through their representatives in Congress, and not to the Executive; that the confiscation of the lands of the rebels and their distribution among the soldiers and actual settlers was a just measure.

Fremont's nomination. The convention nominated General Fremont for President, who at once accepted. He said: "The ordinary rights secured under the Constitution and the laws of the country have been violated, and extraordinary powers have been suspended by the Executive." He continued, "We have to-day an administration, marked at home by disregard of constitutional rights, by its violation of its personal liberty and the liberty of the press, and as a crowning shame by its abandonment of asylum. . . . If Mr. Lincoln should be nominated, there will remain no other alternative to organizing against him every element of conscientious opposition with a view to prevent the misfortune of his election." The general outburst of indignation which followed this convention, and the certainty of the nomination and election of Lincoln, caused Fremont to withdraw from the ticket within a month after his nomination.

Renomination of Lincoln. One week after the Cleveland convention the Republican convention met in Baltimore. Public opinion was voiced by one of the leaders who declared that Mr. Lincoln was already nominated and the convention had nothing to do but to announce the decision of the people.

Nomination of Andrew Johnson. The desire to appease certain elements in the party, and also to weaken the forces of the Confederacy, was manifest in the selection of the candidate for Vice-President. Hannibal Hamlin, an anti-slavery Democrat, had been an able and impartial presiding officer. But in the convention he was set aside for Andrew Johnson of Tennessee. Mr. Johnson's attitude in opposition to Secession in his

own State, his refusal to leave the Senate when his State seceded, and his strenuous efforts to maintain the integrity of the Union, attracted the attention of the Administration which made him military governor of his State and he left his place in the Senate to accept the position. All this was sufficient recommendation for his nomination as Vice-President.

Democratic convention. On the 29th of August the Democratic convention met in Chicago and organized by electing Horatio Seymour of New York as permanent chairman. It adopted a brief platform of seven resolutions, which proved to be a political blunder. The platform was altogether negative in character, denunciatory in temper, and referred to the war as a failure. George B. McClellan was nominated for President on the first ballot, and George H. Pendleton was nominated for Vice-President on the second. As before mentioned, General McClellan, in his letter of acceptance, repudiated the suggestion of the platform that the war was a failure.

Election. The campaign resulted in the triumphant reelection of Lincoln, who received 212 electoral votes out of a total of 233. However, General McClellan received a popular vote of 1,802,237 out of a total of over 4,000,000. Of the 150,635 votes cast by the soldiers in the field, Lincoln received all but 33,748. The election was an endorsement of the war policy of the Administration. The war thus left the parties much as it found them and political theory was accentuated on old lines.

Positive and negative parties. The exigencies of war compelled the party in authority to assume a positive character, to act as a constructive force emphasizing authority. On the other hand, the party out of power took the defensive attitude, which was negative in character and emphasized liberty. And as the party in power always become a Loose Construction party, the Republican party employed a liberal construction of the Constitution. As the party out of power as

truly becomes the Strict Construction party, the Democratic party employed that principle in the interpretation of the Constitution. This rule of interpretation will explain the persistent opposition of the Democratic party to the various measures of the government under Republican control for the past fifty years. This serves as the rational basis upon which parties in democracies arise and grow. This line of demarcation was further accentuated by the Reconstruction measures.

Lincoln's expectations. The ultimate suppression of the rebellion was from the very opening of the war regarded by President Lincoln as a matter of time. He never entertained a doubt about the triumph of the Union cause. He expected to be called upon to reconstruct the States. He was therefore much concerned about what was to be done after the surrender of the Confederate forces. The eleven States in Secession had no representation in the national Congress, both the senators and the representatives from these States having withdrawn at the opening of the war. When rebellion had ceased, order was restored, and national authority reinstated throughout the rebellious States, what should be done relative to admitting their senators and representatives who applied to Congress for admission? This was the problem of Reconstruction. Upon this question at least two distinct theories existed in the minds of the statesmen. President Lincoln had said in his first inaugural address, "No State upon its own mere motion can lawfully get out of the Union; resolves and ordinances to that effect are legally void. . . . I therefore consider that, in view of the Constitution and the laws, the Union is unbroken." This view was repeated in his first annual message. He said, "The States have their status in the Union, and they have no other legal status." This view would imply that the question of Reconstruction was an executive function. As the President is charged with the enforcement of the laws of the land, any infraction of the same would be suppressed by him as the commander-in-chief of the army and the navy.

Views on the status of seceded States. There were others who regarded the States in rebellion as having forfeited all rights under the government, and when conquered, should be treated as conquered territory, to be dealt with as the majority of Congress saw fit. This latter class claimed that Reconstruction was not an executive, but a legislative function. Mr. Lincoln believed that the States should be put as nearly as possible *in statu quo*, except in those matters where inevitable changes were entailed by actual war. He earnestly desired to interfere with local rights as little as was consistent with the enforcement of law and the maintenance of order. To a friend of local self-government he said in reply to a complaint, "The people of Louisiana know full well that I never had a wish to touch the foundations of society, or any right of theirs. With perfect knowledge of this they forced upon me the necessity to send armies among them, and it is their own fault not mine. They very well know the only way to avoid all this is to take their place in the Union upon the old terms." His anxiety to restore national authority was not simply in the interest of order, but he earnestly desired to protect and respect that considerable population that remained loyal to the Union.

Lincoln's steps toward reconstruction. Then as the national arms succeeded in bringing under Federal control various parts of the States, such as parts of Louisiana after the capture of New Orleans in early 1862, and parts of Arkansas, and most of Tennessee, measures for maintaining order were necessary. It was the desire of the government to supersede the military authority in these localities with civil authority as soon as possible. Accordingly military governors were appointed for the States, with instructions to install self-government as soon as conditions would permit. Andrew Johnson was appointed governor of Tennessee; Edward Stanley of North Carolina, G. F. Shepley of Louisiana, and John S. Phelps, of Arkansas. Mr. Lincoln declined to be

committed to any one specific method of restoration. His information had led him to prefer to hold himself ready to accept any or all plans that would better adjust themselves to the local conditions where applied.

His proclamation — December, 1863. On the eighth day of December, 1863, the President in his annual message informed Congress that on that day he had issued a proclamation extending pardon to all who had engaged in rebellion, except specified classes. The pardon was granted on condition that a prescribed oath of allegiance would be taken. The proclamation declared that whenever in any of the seceded States a number of persons, not less than one-tenth of the number of the votes cast in such State at the presidential election of 1860, each having taken the oath and not having violated it since, and being a qualified voter by the election law of the State existing immediately before the act of so-called Secession, should re-establish a government which should be republican, such should be recognized as the true government of the State and receive the benefits of the constitutional provision which guarantees a republican form of government to each State.

Integrity of the State. The proclamation also announced that any provision looking to the permanent freedom and education of the freedmen of the State would not be objectionable to the national executive. It also suggested that the erection of a loyal State government should maintain the name of the State, its boundaries, its subdivisions, its Constitution and its code of laws, existing before the Rebellion, subject only to the modifications made necessary by actual war. The proclamation also reminded the country that the question of the admittance of the members of Congress from these States was with each House which was made judge of the election and qualifications of its own members.

Elements in the presidential plan. The presidential plan rested upon an oath of allegiance, which bound the citizen to

sustain the Constitution, the laws of Congress, and the proclamations of the Executive. It attempted to forestall any usurpation of power by strangers, by insisting on the same qualifications for voting that had been required by the State prior to the war. He wrote to Governor Shepley of Louisiana, warning him against allowing outside persons to interfere in the government of the State. Continuing he said: "To send a parcel of Northern men here as representatives, elected as would be understood (and perhaps really so) at the point of the bayonet, would be disgraceful and outrageous. And were I a member of Congress here, I would vote against admitting any such man to a seat." The plan depended upon at least one-tenth of the voting population in 1860 taking the oath. This phase was bitterly opposed by the radical element in Congress which denominated the plan as the "shorthand method" of Reconstruction. However Louisiana was reconstructed under it. The new constitution adopted abolished slavery. Michael Hahn was inaugurated on the 4th of March, 1864, as the first free-State governor of Louisiana.

Reconstruction in Arkansas. The President's proclamation had been well received by a considerable element of the population of Arkansas, where from the very beginning a strong Union sentiment existed, but not sufficient to prevent the radicals from carrying the State into Secession. As soon as the proclamation reached these people, they proceeded to erect a State government. They adopted a Constitution in compliance with the proclamation, which abolished slavery. The constitution was ratified by a majority of the people voting. On the same day Fishback and Baxter were chosen as senators. When they presented their credentials to the United States Senate, that body, under the lead of Senator Sumner of Massachusetts, passed the following resolution: "That a State pretending to secede from the Union, and battling against the general government to maintain that position, must be regarded as a rebel State, subject to military

occupation, and without representation on this floor, until it has been readmitted by a vote of both Houses of Congress; and the Senate will decline to entertain any application from any such rebel State until after such a vote of both Houses."

Attitude of the Senate. The decisive attitude of the Senate in rejecting or refusing to admit the senators of a State which had complied with the presidential requirements of restoration, revealed a divided council in the Administration. It was discovered that a constitutional difference existed between the advocates of Reconstruction. The President had proceeded on the ground that the reconstruction of the States was an executive function, based upon his obligation to enforce the laws of the land. The Senate had proceeded on the ground that it was a matter of legislation, and therefore it remained with Congress to fix the conditions upon which the members of Congress from the States would be admitted.

Executive function. Whether it was a question for the executive or for the legislative department, depended upon the status of the State after Secession. Mr. Lincoln insisted that all acts of Secession were void, and the seceding State had no status outside of the Union. Therefore the State was not out of the Union. The only way it could get out was by revolution. He admitted that the proper relations between the State and national government were interrupted and should be restored as nearly as possible to what they were before the war. As rebellion was organized opposition to the government, and the President, as the commander-in-chief of the military power, was charged with its suppression, the restoration after the war was largely an executive function.

Legislative function. On the other hand, there were those in Congress who claimed the act of rebellion placed the States beyond the protection of the Constitution, so that they could not claim what they enjoyed before their rebellion, except by the sufferance of the national government. This sufferance was defined by the law-making power in the government.

This power claimed that the States, having voluntarily attempted to destroy the Constitution, had no voice in the attempt to repair the breach, or in restoring it. It claimed the States were conquered, and as conquered States they were subject to the will of the government as territories of the government.

Congressional plan. With this view Congress proceeded to formulate a plan of Reconstruction. It framed a bill requiring the President to appoint for each State a provisional governor, whose duty it was to administer authority until a State government was organized. The provisional governor was to take a poll of all the white male citizens of the State, and when a majority of them had taken the oath of allegiance, a convention was to be called to frame a constitution. Only such delegates as had taken the oath, and not otherwise disqualified, could take part in the convention. The constitution must incorporate certain limitations on suffrage and office-holding. It incorporated what was afterward known as the iron-clad oath. It was required to abolish slavery and repudiate the Confederate debt. The bill required that the constitution must be ratified by a majority of the popular vote. And when these facts had been certified by the governor to the President of the United States, the latter, after obtaining the consent of Congress, should recognize the government so established as the government of the State, and from that date congressmen and presidential electors should be elected in the State.

President's treatment of the bill. This bill was presented to the President for his signature, as he afterward stated, just one hour before Congress adjourned *sine die*. The President neither signed nor returned it. This was known as the pocket veto to which Jackson frequently resorted. A few days later the President did the unusual thing of issuing a proclamation stating his reasons for not signing the bill. This incident reveals a ruling principle in the life of Abraham Lincoln. No

man in our history had the implicit faith in the soundness of the judgment of the people at large as did he. Only two men ever approached him in this trait of character; they were Samuel Adams and Thomas Jefferson. Mr. Lincoln in times of crises frequently took into his confidence the whole American people, as he did on this occasion. In his proclamation he said that he declined to commit himself inflexibly to any scheme of Reconstruction, but preferred to hold himself ready to adopt any scheme that appeared most feasible. He also declined to set aside the free-State constitutions already adopted in at least three States in order to make room for the inflexible plan of Congress. He made it plain that if any State would embrace the plan of Congress he would readily assist it in that plan of Reconstruction. Without the State's consent, he questioned the authority of Congress to abolish slavery in the States. He repeated his recommendation for a constitutional amendment to abolish slavery.

Wade-Davis manifesto. This unprecedented procedure on the part of the Executive was a signal for bitter resentment of certain congressmen. Such men as Senators Sumner and Wade, and Representatives Stevens of Pennsylvania, and Henry Winter Davis of Maryland, were gravely offended. The proclamation of the President was issued on the 8th day of July, 1864. On the 5th of August following, appeared in New York *Tribune* the famous Wade-Davis manifesto, a lengthy document, denouncing the President for what was styled his unconstitutional procedure. This famous document charged the President with a conspiracy to defeat the Reconstruction plan of the friends of good government, in order that he might establish mere shadows of government in his own interest and impose them upon the people by military dictation. It charged him with attempting to reorganize the States that he might hold in his hands their electoral votes for personal ambition. It charged him with inconsistency and bad faith on the slavery question; with defiance of the

legislative department of the government by rejecting a bill enacted by it, and then putting only such parts of it in operation as suited him. It claimed that the presidential plan was in the interest of the rebellious, rather than the loyal, population. The manifesto was caustic in tone and terrific in indictment. However the people did not heed it.

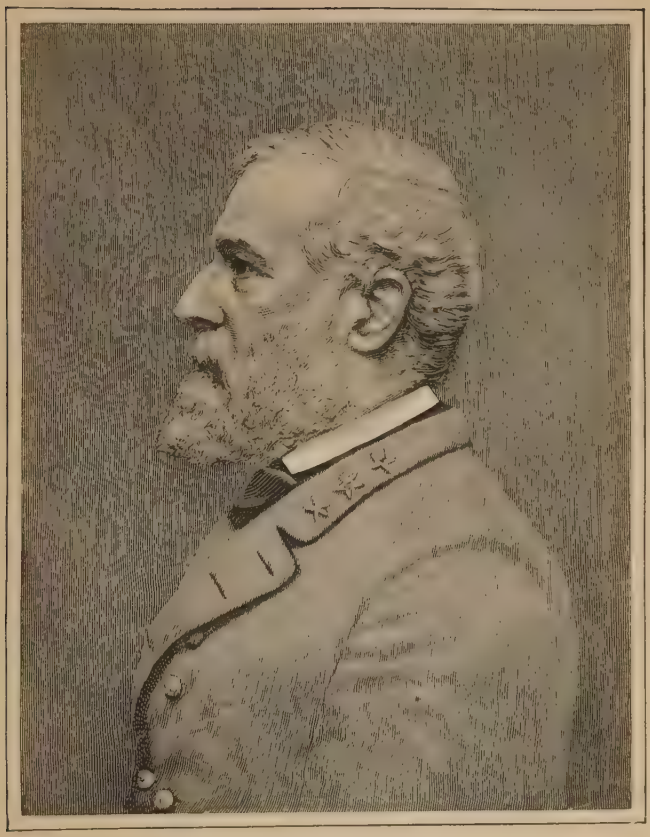
President's desire. The attitude of the President clearly showed his anxiety to interfere with local concerns just as little as the situation would allow. Inevitable friction between civil and military authority in the process of Reconstruction gave him no end of trouble, as is revealed in his correspondence on the subject. He was determined to stand by the Emancipation Proclamation and such other exercise of authority as he was compelled to use. This determination together with his desire not to punish those who had stood loyal to the cause of the Union, although holders of slaves, was fraught with unending difficulty. To exercise the supremacy of the Constitution and at the same time to respect the privilege of the people of the States, was a grave problem. On the assembling of Congress the Reconstruction question was again taken up. It was apparent that the election had had the effect of restraining the radicalism of certain leaders in Congress. Mr. Lincoln's position, having been reinforced by a sweeping election, was too strong to be set aside.

Procedure in Louisiana. In October, 1864, the legislature of Louisiana elected senators, who sought admission to the Federal body. The President had been in communication with the chairman of the judiciary committee of the Senate. He inquired, "Can Louisiana be brought into proper practical relations with the Union sooner, by admitting, or by rejecting the proposed senators?" The committee reported in February in favor of recognizing the government of Louisiana as the State government A minority in opposition, taking advantage of the rule which prevents limitation of debate, talked out the time to the end of the session, consequently Congress

adjourned with nothing done on Reconstruction. For at least nine months there could be no further opportunity to accomplish anything toward Reconstruction by the legislative department, unless the President should call Congress in special session.

Lincoln's concern. At the time of adjournment, events in the field pointed to an early end of the Rebellion. President Lincoln had been at the front to consult with Lieutenant-general Grant. A few days later General Lee surrendered. Throughout the loyal States, veritable tornadoes of enthusiasm swept the country not unlike the excitement created by the attack upon Fort Sumter four years before. The Capital was the Mecca of enthusiastic delegations which went to congratulate the President, and through him the American people, for the successful termination of the war. While the President shared with his callers the joy occasioned by a cessation of war, he remained silent, evidently occupied with the larger problem of restoration, which had claimed his best thought for the preceding twelve months. To him victory was one thing, how to use it a wholly different thing. With his keen penetrating vision he saw before him difficulties to be encountered. As the executive head, charged with the duty of enforcing order throughout the nation, he sincerely desired to do it in a way that would insure the establishment of a republican form of government in all the States. He desired the restoration of the States as nearly as possible to what they were before the attempt to secede was made, subject only to such changes as were made necessary by the war. He was committed to the emancipation of the slaves in the rebellious States, but he did not desire to extend it to other States without an amendment to the Constitution, which he had frequently recommended. He was clear in his conviction that Secession was a crime, but he preferred to hold individuals, rather than States, to answer for it.

His discretion. He was fully alive to the enormity of the crime of rebellion, yet he was inclined to honor and respect an



General Robert E. Lee

oath of allegiance. He disliked to recognize any number less than a majority as the government in a State, yet he felt that a loyal minority should be respected and should not be subjected to the rule of martial law if avoidable. He frequently declared that he would not rescind his proclamation of emancipation, but he questioned the power of Congress to abolish slavery in the States. He fully conceded to Congress its jurisdiction in declaring the qualifications of its own members, but questioned the wisdom of prescribing any fast rule of restoration. He stood ready and willing to join any attempt at Reconstruction that agreed with our system of government. He, perhaps, more clearly than any other man in the nation, comprehended the status of the States in rebellion, but he ignored the metaphysical distinctions whose inevitable results were confusion.

His last speech. On the 11th of April, 1865, from the Executive Mansion he read to a listening throng his last speech, a carefully prepared exposition, almost entirely devoted to the problem of Reconstruction. Among other things he said: "Reconstruction which has had a large share of thought from the first is pressed much more closely upon our attention. It is fraught with great difficulty. . . . Nor is it a small additional embarrassment, that we, the loyal people, differ among ourselves, as to the mode, manner and measure of Reconstruction." In referring to the censure of his part in the Reconstruction of Louisiana he said: "In this I have done just so much as, and no more than, the public knows." He then repeated what had been done in Louisiana. He continued, "As to sustaining it, my promise is out as before stated. But as bad promises are better broken than kept, I shall treat this as a bad promise and break it whenever I shall be convinced that keeping it is adverse to the public interest; but I have not yet been so convinced." He showed slight irritation over the contention of certain metaphysical statesmen both in his own and in the opposite party, who persisted that the States

were either *in* or *out* of the Union. To these he said: "As it appears to me that question has not been nor yet is a practically material one, and that any discussion of it, while it thus remains practically immaterial, could have no effect other than the mischievous one of dividing our friends. As yet, whatever it may hereafter become, that question is bad, as the basis of a controversy, and good for nothing at all — a mere pernicious abstraction. We all admit that the seceded States, so called, are out of their proper practical relations with the Union, and that the sole object of the government, civil and military, in regard to those States, is again to get them into that proper practical relation. . . . Finding themselves safely at home, it would be utterly immaterial whether they had ever been abroad." He continued, "Let us all join in doing the acts necessary to restoring the proper practical relations between these States and the Union, and each forever after innocently indulge his own opinion whether in doing the acts he brought the States from without into the Union, or only gave them proper assistance, they never having been out of it." He continued, "It is also unsatisfactory to some that the elective franchise is not given to the colored man. I would myself prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers."

His death. The new announcement was never made. Four days later the bullet of the assassin closed his lips to any further announcement upon this great question, from the one man whose influence with the people enabled him to dictate terms upon which the States could have been reconstructed. His death removed the one insurmountable obstacle to the success of radical measures in Reconstruction. The death of Mr. Lincoln removed the greatest friend of the erring States, and made way for another, a citizen of one of the insurrectionary States, but pre-eminently disqualified to lead in such an important work as Reconstruction.

State of parties. Civil War and Reconstruction during their continuance saw the country with two political parties, the Democratic and the Republican, divided upon constitutional questions, on *strict* and *loose* construction of the Constitution. The Republican party held factions growing out of the war; but the differences were not on the lines which separated the party from its hereditary opponent. On the power of the government, the party was a unit. On the other hand, the Democratic party was distracted by the attitude of its Southern wing.

CHAPTER XVIII

LEGISLATIVE AND EXECUTIVE CONFLICT

Situation of Johnson — April 15, 1865. On the 4th of March, 1865, the 38th Congress ended by limitation, and the 39th began. By a constitutional requirement the sessions of Congress open on the first Monday of December, unless called into special session by the President before that date. Lincoln's death on the 15th of April left to his successor, Andrew Johnson, a heritage of complicated problems growing out of the war. Chief of these was that of Reconstruction, which had given Mr. Lincoln so much concern during his last days. Johnson had been an interested observer of the dispute between his predecessor and the radical wing of the Republican party in Congress. As the military governor of Tennessee, appointed by Mr. Lincoln, he was a part of the presidential scheme of Reconstruction.

His treatment by Tennessee. The treatment he had received at the hands of the dominant element in his State, incapacitated him to fully share Mr. Lincoln's clemency toward the insurrectionary States. Having sprung from the lowlands of humanity, his birth and education excluded him from the social rank which controlled affairs in his own State. By dint of obstinate courage and constant application, he rose step by step until he appeared in the Senate chamber as his State's representative. When the slavocracy carried his State into Secession he obstinately and courageously refused to go with it, and retained his seat in the Senate, supported the

government in the suppression of rebellion, and on the 4th of March, 1862, resigned his seat to accept the military governorship of his State to further the efforts of the Union. His denunciation of Secession and slavery was caustic. His bold stand attracted the attention of the Administration party. His unique position as a citizen of a slave State which had seceded, his refusal to abide by the ordinance of Secession, his acceptance of the post of military governor at the hands of the President of the United States to assist in suppressing the insurrection, rendered him a logical candidate for Vice-President in the Baltimore convention. On the first ballot he was nominated over Hannibal Hamlin, the then present incumbent. It is not probable that the possibility of his succeeding to the presidency had entered the mind of any considerable part of the convention.

His utterances on the death of Lincoln. When he was inaugurated as the third accidental President he revealed strong feeling against the leaders of rebellion, and broke out in bitter invective. He momentarily employed the terms "treason" and "traitors," and more than once publicly proclaimed that traitors must meet the penalty of treason. These rabid utterances had a double effect. They pleased the radical wing of the Administration, who told him in language more forcible than elegant, that they believed in him. They exultingly announced that the days of imbecile weakness were at an end. To the conservative element of the country, his utterances suggested unwise severity and alarmed many leaders who had favored the policy of clemency suggested in the policy of Mr. Lincoln. The fears of the latter were soon allayed. Under the influence of his great Secretary of State, Mr. Seward, he at once set himself to the task of Reconstruction. It was but natural that under the influence of Lincoln's Secretary of State, and as heir to Lincoln's plan of Reconstruction, he having been a part of the plan, he would proceed on the line laid down by his predecessor. He determined not to be

hampered in this work by summoning Congress in special session.

Efforts to complete Lincoln's work. From the time he was inaugurated to the convening of Congress, eight months, he labored unhampered by the element which had troubled Lincoln and which had professed that it believed in Johnson. He had a mind that did its own thinking and a will that disliked opposition. Less politic, less magnanimous and more arrogant than his predecessor, he apparently delighted to exercise his authority in rehabilitation. He esteemed the task of restoration an executive function and he proceeded with no hesitation. A republican government for each State was his plea. To make sure of it he appointed for each State a provisional governor, who was instructed to call a convention to be composed of loyal delegates who had accepted and fulfilled the provisions of the amnesty proclamation by taking an oath of allegiance to the government. The qualifications for electors for this convention were to be the same as existed in the State prior to the ordinance of Secession, which in the language of his proclamation, was "a power the people of the several States comprising the Federal Union have rightfully exercised from the origin of the government to the present time." The provisional governor was to have the assistance of the military commander of the department in which the State was located. The convention was required to provide for the abolition of slavery. On this basis Reconstruction proceeded.

Reconstruction of North Carolina. On the 29th of May, 1865, the President by proclamation announced the Reconstruction of North Carolina. It stated that the armed forces of the Rebellion had been overcome and that it was the President's duty to enforce the constitutional obligation to guarantee to each State a republican form of government. In execution of his plan, he appointed William W. Holden as military governor, charged with the duty of prescribing "rules

for convening a convention to be composed of delegates to be chosen from that portion of the people of said State, who were loyal to the United States and to no others, for the purpose of altering or amending the Constitution thereof and with authority to exercise within the limits of said State all the powers necessary and proper to enable such loyal people of the State of North Carolina to restore said State to its constitutional relations with the Federal government, and to present such a Republican form of State government as will entitle the State to the guaranty of the United States therefor and its people to protection by the United States against invasion, insurrection, and domestic violence." The eligibility of an elector or a member of the convention required the voter or member to take the oath of allegiance and to possess such qualifications as were required by the State constitution prior to the time of Secession. This proclamation serves as a type to explain the various proclamations issued for the Reconstruction of all the States.

Mississippi and other States. On the 13th day of June, 1865, the proclamation reconstructing the State of Mississippi was issued. Four days later the plan was applied to Georgia and Texas. Before the end of the month, Alabama and South Carolina were reconstructed. On the 13th day of July, Florida was authorized to proceed to form a State government. In all the States the military commander of the department and all the military forces were ordered to aid and assist the provisional governor in carrying into effect the proclamation. They were enjoined from hindering the loyal people in their organization of a State government as authorized in the proclamation. The Secretary of State was directed to put into operation all laws which properly belonged to his department. The Secretary of the Treasury was directed to put into operation the revenue laws, giving preference in his appointments to the loyal citizens residing in the district. The postmaster-general was directed to establish post-offices and post routes and put

into execution the postal laws of the Government within the State reconstructed. The Attorney-General was directed to apply and enforce the administration of justice within the State. The Secretary of the Navy was directed to take possession of all public property belonging to the Navy Department within the State, and to put into operation the laws of Congress relative to naval affairs. The Secretary of the Interior was also directed to put into operation within the States the laws pertaining to his department. These directions were given by proclamation on the 21st day of June, 1865. Various proclamations lifting the blockade had been issued, and by midsummer the work of executive Reconstruction was approaching consummation.

Opposition in Congress. The 39th Congress convened in regular session on the 4th of December. At least two-thirds of its members were of the Republican party divided between the conservative and the radical factions with the latter predominating. The radical faction of the Upper House was led by Sumner and Wade, and in the Lower House by Thaddeus Stevens. Months before the meeting of Congress, rumors were afloat to the effect that at the opening of Congress there would be a sharp difference between that body and the President on the question of Reconstruction. In fact the wildest sort of rumors had spread that a Southern man with the pretentions of full appreciation of the fruits of the war, was in reality reconstructing the States with no reference to the security of the fruits. What were the fruits referred to, is not clear, but they might have meant the permanent lodgment in authority of the Republican party, or they might have referred to the greater security of the freedom in the States. Both of these reasons were offered in explanation.

The President's mind changing. This difference between the two departments of the government was intensified by the obvious change of attitude of the President. At the time of his inauguration the public was greatly concerned, especially

the Democratic part of it, and the conservative faction of the Republican part of it, over the extreme utterances of the President. The actual work of Reconstruction and the powerful influence of Mr. Seward and other members of the Cabinet, which had been continued from the Lincoln administration, had greatly softened the obstinate will of the Executive. Ere midsummer the men who had publicly welcomed him to the presidency were charging him with treasonable purposes. By the time that the 39th Congress opened, the radical wing of the party in power was well solidified in opposition to the policy, if not to the person, of the President.

His first annual message. Great interest centered in the first annual message of Johnson, which he sent to Congress on the 4th of December. It set forth the necessity of the exercise of the national prerogative, and also with equal force, the necessity of State privilege of local self-government. Here was an attempt to adjust the seeming conflict between the two contending forces which are contingent upon all government and have uniformly been the cause of wars in all countries where all vestige of the rights of the people is not completely eliminated, and which has been the rational basis of party division in all countries that recognize the will of the people as an element in government — the message declared that our system of government required both these principles: prerogative in the nation and privilege in the State. The nation's integrity depended upon the system of States. The perpetuity of the Constitution brings with it the perpetuity of the States. The whole cannot exist without the part and vice versa. The destruction of the one is the sure destruction of both. The message then propounded the significant question: "Shall the States be held as conquered territory, or regarded as integral States?" It declared military government unwise inasmuch as it placed local interests in a foreign one-man power, which implied the States had ceased to be States. It declared all acts of Secession null

and void, which had impaired the vitality of their constitutions but did not extinguish them; which suspended them but did not destroy them. The President then informed Congress what had been accomplished toward Reconstruction. Pardon had been granted to all persons except specified classes, on condition of such persons subscribing to an oath of allegiance. The States had been invited to amend their Constitutions to adjust themselves to the conditions arising out of the war. President Johnson frankly admitted that the question of admitting congressmen to seats in Congress was for the two Houses, and not for him, to determine. He argued against the exercise of national authority over suffrage in the States, and expressed his belief that the States would provide adequate support and protection for the freedmen.

Reconstruction committee appointed. On the first day of the session of the 39th Congress, immediately after the election of the Speaker of the House, and before the receipt of the President's message, Thaddeus Stevens introduced a resolution providing for the appointment of a committee of fifteen, nine from the House and six from the Senate, to be known as the Committee on Reconstruction, whose duty it was to report on the condition of the States lately in rebellion. It further provided that until its report was heard no member from the aforesaid States should be seated as representative of the States. The bill was passed by a decisive majority. The Senate offered a slight amendment, with which the House readily concurred. Thus under the constitutional provision which permits each House to be judge of the elections and qualification of its own members, Congress nullified all that had been attempted by the President in the preceding eight months.

Two reports upon the South. On the 18th day of January, 1866, the President informed the Senate upon the condition in the Southern States. At the time Congress provided for the appointment of the Committee of Fifteen to report on the

matter of Reconstruction, the President had requested General Grant to report on the condition of the States as he found them in his tour through the South. Making this information a basis of his report, he declared that the people in North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Tennessee, had reorganized their State governments and were yielding obedience to the cause and government of the United States with more willingness and greater promptitude than under the circumstances could reasonably have been anticipated. The President also reported that the 13th amendment had been ratified by all the States except Mississippi, and steps had been taken in most of them for the comfort, protection and security of the freedmen. Carl Schurz, who had been authorized to report upon the condition in the South, saw things differently. His report was adverse to the South. These conflicting reports were designed to accentuate the points of difference between the two departments of government. Naturally the President relied upon General Grant, his informant, while Congress relied upon Mr. Schurz. The difference was not one of law so much of as fact; and the fact was in dispute, with testimony of equal veracity offered on both sides.

Indiscretion of certain democratic leaders. The breach was greatly widened by the attitude of certain members of the opposition party who became conspicuous in endorsing the presidential plan of Reconstruction. The sarcasm formerly employed against the Administration was now used against the advocates of the congressional method of Reconstruction. The limitations of human nature were too great to ignore such attacks, and as a matter of course, the breach between the President and the radical element of Congress coincided with the respective Reconstruction policies of the two parties, Republican and Democratic, which at the time unfairly placed President Johnson with the men who but a short time before were hunting him down as a political renegade.

Partizan spirit. It was too much to expect any one party to monopolize all the honor to be achieved in the work of rehabilitation. Every man of commanding influence demanded a hand in the work. It was but natural to expect the men who had stood by the policy of the prosecution of the war to a vigorous and victorious end, to demand the rights of determining what should be the plan of restoration, and also to see to its execution. This was the inevitable result of a partizan government. Its danger was that it would likely sacrifice constitutional rights for the sake of party advantage. The party in opposition to Mr. Lincoln stood on the naked rights of the States, as States, to have representation on the floor of Congress as soon as they discontinued rebellion against the authority of the nation, regardless of the character of the statutory enactments in the various States with regard to the control of the freedmen. The party in power insisted upon specific conditions that must be met by the seceded States before their members could be admitted to the floor of Congress. The friends of President Johnson, which were soon to be identified with the opponents of the party which had elected him, insisted upon the fundamental proposition that Secession was null and void; that no State on its own motion could leave the Union; that while it could suspend the operations of the State constitution, it was still a State. They had for authority no less distinguished a man than President Lincoln, who had virtually said the same thing. Accordingly they insisted that as soon as the Rebellion was suppressed, a State's representation in Congress could be demanded by force of the Federal Constitution. In reply, the radical element of the Republican party held that by voluntary act of Secession, the constitution of the State was suspended, and by act of rebellion the State became subject to military control, and by the suppression of rebellion the State representation depended upon the will of the *nation*, and not upon the will of the *State*. The friends of the President pressed the question,

"What specific act took the States out of the Union?" The reply was a rehearsal of the horrors of war.

Johnson's view of the status of the States. An examination of the public documents of the President and of the debates in Congress, shows a clear distinction between the policy of the President and that of the dominant element in Congress. The President held that the ordinances of Secession, being null and void, should be rescinded; the Confederate debt, contracted in aid of the Rebellion, should be repudiated, at least, in so far that it could not be held against the government; that the emancipation of the slaves by executive proclamation having been required as a war measure in the suppression of the rebellion, the States must necessarily amend their constitutions in accordance with the proclamation. When these three conditions were met, the States could not be constitutionally or justly required to do more, and could therefore demand their representation in Congress. It was asserted that this much and no more could be demanded, on a basis of justice and constitutionality.

The view of Congress. The dominant element in Congress held that the States, in addition to the foregoing, would have to guarantee to the freedman specific privileges and rights. Just what rights should be recognized was a source of wide dispute. There were those who were satisfied to grant him civil rights, namely: the rights of the marriage contract, the rights of labor contract enabling the laborer to enter into a contract to perform labor and to sue upon it to enforce payment, and lastly, to secure to his children educational rights. Then there were those like Sumner and Stevens who demanded rights, both civil and political, if not social, equal to the rights of the white population. These differences were finally compromised in a measure identical with the fourteenth amendment later imposed upon the States. This defined citizenship to include the freedman. It granted him all the rights of a citizen. It further demanded for him the right of

suffrage, or in its stead, a reduction of representation in Congress of the State so denying suffrage, in the proportion of the number so denied to the voting population of the State, including the blacks of voting age. It also imposed what was known as the "iron-clad oath." It also repudiated the Confederate debt and confirmed the national debt. It also empowered Congress, by appropriate legislation, to carry into effect the provisions of the fourteenth amendment.

The real distinction. Here then was the real difference of policy between the two departments; a difference of degree, not of kind. In Congress the debates became heated and at times undignified, in the course of which the President came in for considerable censure. His nature incapacitated him to regard such censure lightly. He frequently reminded Congress of the unique situation of its attempting to legislate for the whole nation with eleven States, one-fourth of the whole number, unrepresented in the body. On the 22d day of June, 1866, in a message to Congress, he raised the question as to whether a Congress which had refused seats to the representatives of eleven States, all of which had been reconstructed, was a legal body. He reminded the country of the suicidal policy of regarding the States as States in the amendment to the Federal Constitution and counting them in order to satisfy the constitutional requirement of three-fourths of the States necessary to ratify an amendment, and at the same time denying their status as States in legislation, the major part of which concerned them most. Upon this basis largely, he exercised the veto power, and rejected most of the legislation of the 39th and 40th Congresses.

Veto of the Freedmen's Bureau bill. On the 19th day of February, 1866, Congress, having passed a bill establishing the Freedmen's Bureau, sent it to the President for his signature. He returned it with his objections. He stated that the Rebellion was at an end, and that the measure was as inconsistent with the actual condition of the country as it was at variance

with the Constitution of the United States. He declared that the legislation was designed to prevent the former slaves from becoming self-sustaining and was therefore vicious. He declared that the bill was passed when there was no representation from the eleven States in the Union mainly affected by it, and reminded Congress that American ideas of liberty forbade taxation without representation. The bill, however, was passed over his veto.

Veto of the Civil Rights bill. On the 27th of the following March, the President vetoed the bill known as the Civil Rights bill. This bill granted to the freedmen the rights to make and enforce contracts; to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold and convey real and personal property, and to have "full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by the white citizens." His objections were to the clause providing for the equality of the races, and the assumption of power by the Federal government which properly belonged to the States.

Proclamation ending the war. On the 2d of the following April, by proclamation, he formally declared the war at end in all the States except Texas. The proclamation ending the war in Texas was not made until August 17, 1866.

Second annual message. On the 3d of December, he sent to Congress his second annual message. It was largely devoted to a defense of his plan of Reconstruction and an argument against the attitude of the majority of Congress. It plainly revealed what was known to all, a serious rupture between the two departments of the government. It pointed out the status of the States, and the condition of the freedmen as the immediate causes of the dispute. He repeated his view that the States were still States of the Union. He insisted that the status of the freedmen should be left to the States chiefly interested and not to the Federal government. The message directly challenged the reconstruction plans of Congress.

Situation in the South at close of war. When the Southern soldiers returned to their homes at the close of the war, a serious situation confronted them. Their country was devastated, their wealth was gone, their money was worthless and their slaves were free. Those who had been accustomed to give orders, and those whose duty it was to obey, were now by the law equally free. The war had thus thrown upon the South a great mass of people recently slaves but now free. What disposition to make of them, was the supreme question. The former condition of the slaves incapacitated many of them to become self-sustaining for a time, if ever. Their presence could not be avoided, their continuance as slaves was illegal, and as freedmen they had no status under the civil law. At once many of the States, in order to meet the difficulty, enacted various laws under the name of vagrancy laws which virtually re-enslaved much of the free population. Some of these laws attached a penalty to idleness, so arranged that the culprit under the law was as unalterably subject to the order of his master as if he were still in slavery. From the nature of the case, legislation was imperative. There is no doubt that much of it was too drastic, and very unwise. The knowledge of such enactments aroused the radical majority in Congress and won for it support that would have been withheld under other circumstances. It convinced the majority that something like the Freedmen's Bureau legislation was imperative. Notwithstanding these enactments among the earliest acts of the States, the President insisted that the States were providing adequate protection for the freedmen. To this, the radicals retorted that the protection was such as the lion affords to the lamb. They pointed out a system of legal slavery in the South nullifying, under a penalty, the amendment of the Federal Constitution abolishing slavery, by which system the South not only ignored the laws, but repudiated the Constitution itself. This procedure in the Southern States so inflamed the radicals, and so weakened the

argument of the conservatives, that the former soon had complete control of the national legislature.

Another veto. Ten days after the meeting of Congress, a bill was passed to extend the right of franchise to colored persons residing within the District of Columbia. When it reached the President for his signature he vetoed it. His message was very able. He declared that suffrage was not necessary for the protection of the negro, and that it would not aid a loyal sentiment, "for local governments already exist of undoubted fealty to the government, and are sustained by communities which were among the first to testify their devotion to the Union." The President deplored the conflict of opinion between himself and Congress. He would not allow any one to go beyond him in the principle of suffrage, but declared that to give it indiscriminately to a new class, wholly unprepared by habits to possess it, would be to degrade, and finally destroy it. The frequency of the exercise of the veto power and the expression of doubt as to whether Congress, with one-fourth of the States unrepresented was a constitutional body, caused bitter remarks from men on all sides of the controversy. The President goaded by the acrimonious attack upon him finally gave way to his feelings. On the 27th of February, 1867, he made a public address in Washington, in which he descended to the use of personalities. He said he had fought traitors in the South, and intimated he could and would fight them in Congress. He used the name of Thaddeus Stevens, and gave the people to understand he looked upon Stevens as a traitor.

Work of the 39th Congress. The whole time of the 39th Congress was mostly occupied with the Southern question. Early in the session the Committee on Reconstruction reported a plan which was debated and amended, until the 30th of April when a plan incorporating the 14th amendment was reported to the House by Thaddeus Stevens. Both Houses had agreed that no member should be admitted to seats from

the so-called seceded States until the matter had been decided. Finally on the 13th day of June both Houses agreed upon what should constitute the 14th amendment, and it also agreed that when any State had ratified the same, its representatives should be admitted to Congress. Tennessee at once ratified it, and was declared restored to its "proper practical relations" in the United States. When the bill restoring Tennessee (the 14th amendment was not presented to the President for his signature) was presented to the President he said, "My approval is not to be construed as an acknowledgment of the right of Congress to pass laws preliminary to the admission of duly qualified representatives from any of the States." The remaining States declined to ratify the amendment, thus rejecting the congressional plan of reconstruction.

Crisis in the Cabinet. In the meantime the President, imitating his great predecessor, thought to appeal to the people. A new Congress was to be elected and in this manner he could submit the case to the final jury. His administration was on trial, and he passionately desired vindication. A crisis had already been reached in his Cabinet. Three of the members, Speed, Dennison and Harlan, had resigned. To counteract any evil effects a great national convention of the friends of the President was held in Philadelphia on the 14th day of August. It was composed of Administration Republicans and Democrats. The purpose of the convention was to unify all the advocates of the presidential plan of both parties. It adopted a series of resolutions endorsing the President's attitude, and declared that Congress had no right to deny representation to any State. It was a national gathering, every State of the Union being represented.

Convention of friends of President. About one month later another convention, composed chiefly of soldiers, met in Cleveland, on behalf of the President. The key-note was expressed by its chairman General Wool when he exclaimed, "Let us have peace!" In both of these great gatherings it

was plain that the main support of the President would come from the ranks of the party opposed to him in the preceding presidential election. This fact identified his cause with the Democratic party, and resulted in the rapid consolidation of the Republican party against him.

Convention of those opposed to him. On the 3d of September, the element in the Southern States opposed to the President met in convention in Philadelphia. They elected his former Attorney-general, James Speed, of Kentucky, chairman. He roused the convention to a frenzy by his unexpected and bitter attack upon his former chief He told the delegates that their last hope was in the firmness of the States that had given their vote to Lincoln as against Davis, that the President had resorted to weapons of traitors to beat down patriots. No indictment of the President equal to this had been made publicly. The resolutions of the convention as strongly condemned the President as those of former conventions had endorsed him. Eight days after the soldiers' convention in Cleveland, a convention of citizen soldiers opposed to the President's policy was held in Pittsburg. John A. Logan was selected chairman, but in his absence General Cox of Ohio presided. The resolutions were presented by Benjamin F. Butler. The enthusiasm of this convention was tremendous.

"Swinging around the circle." In September the President made a trip to Chicago, delivering several speeches in various cities on the way. He publicly declared that Congress was not the Congress, but only a part of it. As it was then constituted it was a body unknown to the law or the Constitution. His extreme utterances militated against his cause. The election which followed was a sweeping condemnation of his policy and a pronounced vindication of the party in power.

Radical measures of Congress. Emboldened by the result of the election and goaded by the summary rejection of the 14th amendment by the South as the condition for restoration,

the radicals reported in February, 1867, a plan of Reconstruction which placed the former rebellious States under military control. In the meantime, to avoid the possibility of the President's neutralizing the effect of the measure through the power of removal, a bill dictated by Stanton was passed to regulate the tenure of office of certain officers. This bill denied to the President the authority to remove any officer whose appointment required the consent of the Senate, without securing the consent of the Senate to such removal. The bill went to the President for his signature on the 2d day of March, 1867, less than a month after the Reconstruction bill was reported to the House for debate. The bill was vetoed. The veto message was a forcible presentation of the powers of the President in the premises. He made it clear that the power of removal was essential to a responsible head. Effective administration depended upon the power of control over its subordinates. He showed that such had been the policy of the government from the beginning. He ably argued that the government would be crippled in the degree that the independence of the departments was interrupted by any one department invading the other. Notwithstanding the cogent argument, the Senate and House were not in a humor to hear constitutional law lectures from the President and they passed the bill over his veto by an overwhelming vote. By this attitude it was clear that Congress had set out to reconstruct the States in spite of the President, and in case they found it necessary they would bury all scruples on the constitutionality of an issue and force their reconstruction measures through.

The Reconstruction measure. On the same day, March 2, the famous Reconstruction measure was presented to him for his signature. It declared in its preamble that no proper State government existed in any of ten States. It provided that the ten States should be divided into five military districts, specifying each. It made it the duty of the President to assign to each district an army officer, not below the rank of

brigadier-general, with sufficient military force to enforce his decrees. His duties were thus defined: to maintain order, to protect all persons in their rights, and to create military commissions to try offenses where local civil process is insufficient. The bill provided against unusual and cruel punishment and against the execution of a sentence affecting the life or liberty of a person without the approval of the commanding officer. The approval of the President was required for the execution of the death sentence. The bill provided for the discontinuance of the military rule, by allowing the State so affected to adopt a State constitution in conformity with the Federal Constitution. It required that such constitution should be framed by a convention of delegates elected by the male citizens of the State twenty-one years old, or over, of whatever race, color, or previous condition of servitude, except such as may have been disfranchised by participation in rebellion; that such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors; that when the constitution shall have been ratified by a majority of the citizens qualified to vote, and when Congress shall have approved of the same, and when the State shall have approved of the 14th amendment, said State shall be entitled to representation in Congress.

Veto message. The President at once vetoed the bill in a message strikingly strong. However, it added but little to what he had already said in previous messages. His point, that the bill enfranchised the negro and disfranchised the white man, which reversed the relation of the races, was forcibly presented. However, it had little if any effect upon the majority of Congress who were not in a humor to grant much respect to the President. The bill was passed over the President's veto, and the famous Reconstruction measure which had occupied the attention of the whole country for more than two years, became a law. The President's hands were completely tied, and the South was left to the alternative of sub-

mitting to the conditions of the 14th amendment, which all the States except Tennessee had previously rejected, or submit to martial law. The history of Reconstruction legislation shows the extent to which men's passions may carry them. When the question first came up, all that was demanded by Congress was the amendment abolishing slavery, repudiation of the Confederate debt, and the grant of civil rights to the freedmen. In the conflict with the President, it finally ended in placing the States under martial law. This extremity measured the tenacity of two departments for a specific plan. Two other supplementary acts to remedy certain defects in the Reconstruction measure were passed, vetoed, and passed over the veto.

Third annual message. On the 3d of December, 1867, President Johnson sent his third annual message to Congress. It was clearly the strongest exposition of his position. He declared that there was no Union such as our fathers understood it; no such Union can exist except when all the States are represented in Congress. He repeated his oft-expressed dictum that the Union and the Constitution were inseparable. If one is destroyed, they both perish. He declared his plan of restoration as a plain, simple application of the Constitution and the laws. He declared that there was not a single place in the country where the Federal authority was interrupted, and under the circumstances the military régime of Congress was dangerous to the welfare of the people. He argued at length that the States lately in rebellion were still members of the Union; that the fact had been acknowledged by all branches of the government; that the right of the government to enforce the Constitution upon these States implied the obligation to observe its limitations, not to deny self-government to them; the honor of the government was at stake to fulfil its pledge of July 22, 1861. He declared the Reconstruction measures unconstitutional, and designed to subvert all local self-government, by enforcing under military control a system

which would place the less competent over the competent population.

Ominous language. One sentence startled the radical wing of Congress and the country. His exact words were, "It is true that cases may occur in which the Executive would be compelled to stand on his rights, and maintain them regardless of all consequences." By some, this sentence was taken to mean that the President might take personal command of the military forces and control the government regardless of the wishes of Congress. Within a month an attempt was made to impeach him of high crimes and misdemeanors. Nothing definite was done until the 7th of July, when James M. Ashley of Ohio formally preferred charges against him. It was referred to the Judiciary Committee, which heard the testimony and then reported. The testimony and report of the committee fill a massive volume. The testimony failed to support the charges and nothing more was heard of it until the President suspended Secretary Stanton.

Suspension of Stanton. On the 12th of August, 1867, relations between the President and his Secretary of War having become seriously strained, the President in accordance with the Tenure of Office Law suspended him and appointed Lieutenant-general Grant secretary *ad interim*. Upon the convening of Congress, the Senate was instructed as to the grounds upon which the President had acted and was asked to confirm the suspension. This was in accordance with the Tenure of Office Law in cases where removals were attempted during the recess of the Senate. After a short deliberation upon the causes of the suspension the Senate refused to concur, whereupon General Grant left the post and Secretary Stanton resumed his duties as Secretary of War. The President was gravely displeased that General Grant did not retain his post in accordance with the President's expressed desire, and thus force the issue into the courts to test the constitutionality of the Tenure of Office Law, which he pronounced unwarranted

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by any sanction in the Constitution. This difference between the President and his lieutenant-general unified the element in opposition to the President, in support of General Grant for the presidency in 1868.

Removal of Stanton. On the 21st of February, 1868, the President ordered the removal of Secretary Stanton and appointed in his stead Lorenzo Thomas. This was the occasion much desired by the radicals in and out of Congress. They charged that it was the beginning of his attempt to carry into effect his threat to rule regardless of the laws, on the ground that Congress as it was then constituted was not a legal body. It was recalled that he had said in his veto message of the 19th of July, 1867, "Whilst I hold the chief executive authority of the United States, whilst the obligation rests upon me to see that all the laws are faithfully executed, I can never willingly surrender that trust or the powers given for its execution." It was also recalled that he had often expressed his doubts of the legality of the national legislature as it was then constituted. His extravagant use of the veto power, and his repeated reminders in his messages and his public announcements that he would veto all their measures sent to him, convinced at least a portion of Congress that the removal of Stanton was evidence of his intention to disregard such laws of Congress as he disliked.

Impeachment of Johnson. Three days after the removal of Stanton, the House of Representatives resolved to impeach him for high misdemeanors, and so notified the Senate. On the 2d and 3d of March articles of impeachment were agreed upon, and on the 4th they were presented to the Senate by the House managers. The charges were couched in eleven resolutions. The last resolution was made the test upon which the case was tried. It charged the President:

1. That he had publicly declared in the city of Washington on the eighteenth day of August, 1866, that the thirty-ninth Congress was not a Congress authorized by the Constitution.

2. He therefore denied in substance the legality of its acts, and refused to be bound by them.

3. In pursuance of this, on the twenty-first day of February, 1868, in defiance of the law regulating the tenure of office of certain officers, passed on the second of March, 1867, he attempted to remove Edwin M. Stanton, Secretary of War, notwithstanding the Senate had refused to concur in his suspension from said office.

4. He attempted to devise means whereby he might prevent the execution of the act to provide for the more efficient government of the rebel States.

Upon these grounds he was indicted by the House of Representatives as guilty of a high misdemeanor. The trial before the Senate, sitting as a Court, with Chief Justice Chase as presiding officer, was one of the most notable in the history of the country. It was ably conducted on both sides, but especially on the side of the President. He had the advantage of the best legal ability in the nation headed by William M. Evarts of New York. Congress had many able lawyers at the time, but none whose keen insight into constitutional law equaled the great array marshaled on behalf of the President. The prosecution was in the hands of Bingham, Boutwell, Wilson, Butler, Williams, Logan and Stevens. The defense was made by Stanbery, Curtis, Black, Evarts and Nelson.

The defense. The defense was a specific denial that the removal of Stanton was in violation of the Tenure of Office Law, on the ground that Stanton was not an appointee of Johnson, but of Lincoln. While the law would have forbidden Lincoln to remove him, it did not apply to Johnson. On the 16th of May, the vote of the Senate was taken on the eleventh article. The roll was called and each senator as his name was called arose to answer, "guilty" or "not guilty," as he was convinced. Thirty-five voted guilty, and nineteen voted not guilty. The prosecution fell short one vote to convict the President of high misdemeanors, and the country was saved the unspeakable shame of the removal of its Chief Executive by impeachment proceedings.

Completion of Reconstruction. Meanwhile the States which had seceded, having no other alternative than to comply with the Reconstruction provisions of Congress or remain under martial authority, one by one, ratified the 14th amendment and complied with the other requirements for restoration. Arkansas was the first to respond. Congress at once passed a law admitting the State to representation in Congress. It was sent to the President on the 20th of June, a month after the impeachment proceedings had closed. The President at once vetoed the bill on the grounds that his approval would be taken as an approval of the Reconstruction measures which he declared in violation of the spirit of the Constitution. Five days later he vetoed a similar bill for the admission to representation in Congress of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida. Both of these bills were promptly passed over his veto.

His last annual message. Congress had also passed a bill and sent it to the President, excluding from the electoral college the States which had not been reorganized. The President promptly vetoed it, and it was as promptly passed over his veto. On the 4th of July the President issued his proclamation, granting unconditional and unreserved pardon to "all and to every person who, directly or indirectly, participated in the late insurrection or rebellion, excepting such persons or persons as may be under presentment or indictment for treason or felony." On the 9th of December, he issued his fourth and last annual message. He referred to the condition of the disorganization under the Reconstruction laws. He reminded Congress that States which had a right to a republican form of government had been reduced to military dependencies; that three States, Virginia, Texas and Mississippi, were still unrepresented in Congress, and contrary to an expressed provision of the Constitution, had been denied the right to participate in the last election for President and Vice-President. He said the congressional policy had disturbed

the relations between the races until the peace of the nation was again in danger. He called for the repeal of the Reconstruction measures, the Tenure of Office bill, and other past legislation designed to curtail the constitutional prerogative of the President. On the 13th of February, he vetoed a bill relative to the colored schools of Georgetown and Washington, and on the 22d another bill regulating the duties upon imported copper and copper ores.

His vetoes. On the 19th of February, 1866, Mr. Johnson issued his first veto message, when he vetoed the Freedmen's Bureau bill. During that year he vetoed five other important measures. In 1867 he vetoed seven others, in the next year six others, and up to February 22, 1869, two more. Most of these bills were promptly passed over his veto.

One view. The Civil War left the nation wounded and bleeding. The Restoration period was bloodless, but it involved a bitterness unknown during the period of war. Opinion will remain divided on the wisdom or unwisdom of the legislation of that period. That portion of the South which supported the Rebellion will see no excuse for the attitude of the dominant party in Congress. In the North there will always remain a considerable element in unison with the Southern opinion. They will vindicate Johnson as an Executive who was true to his party as it was in the time of Lincoln, and as one who followed in the footsteps of his great predecessor. They will endorse him as the exponent of constitutional rights guaranteed to the States, and will quote his numerous messages as masterful treatises upon these rights.

Second view. On the other hand, there will be found throughout the States, those who will hold that, had not the Southern States enacted laws virtually securing to them what they had failed to secure by rebellion, restoration would have been conducted upon lines of extreme clemency: namely, an oath of allegiance, abolition of slavery and a repudiation of the Confederate debt. But the attitude of those States caused

the powers in Congress to change their policy of clemency for one demanding Federal protection of the Freedmen, a policy finally expressed in the Freedmen's Bureau Act, and the Civil Rights bill of 1866. By the offensive attitude on the part of the South toward these measures, the 14th amendment was required in 1867. By the almost unanimous rejection by the South of this amendment as a condition of restoration, the culmination of placing the States under martial law was reached, to remain in that situation until the conditions of restoration were complied with.

The War's imposition. All this was done on the ground that the government was under imperative duty to protect the population which the war had left without legal status. It was the legitimate result of war. The penalty was severe, but not more severe than the offense. Those people holding to the opinion that the penalty was extreme, place the cause of its severity upon President Johnson, rather than upon the people of the South. They charge him with a desire at first, then a determined purpose, to thwart the plan of the people of the United States through their representatives to secure the fruits of the war, simply because their plan did not coincide with his. To this end he touched the two extremes. He denounced the leaders of rebellion as traitors and pledged himself to bring them to speedy justice, then he swung to the other extreme and pardoned them all without qualification or reservation, save those who were under indictment. Mr. Johnson's Democratic propensities, which prior to the war had identified him with the party of that name, won for him the sympathy as well as the support of the Democratic party on the restoration question. The point of division between him and Congress was identical with that which separated the Republican and Democratic parties. In view of this fact he was justified in hoping to secure the nomination for the presidency from their hands. The elections of 1866 left no doubt about the attitude of the Republicans toward him. But his

record precluded his acceptance by the Democrats. While they endorsed his theory, they refused to handicap themselves by taking as their candidate one whose record furnished so much evidence of political apostasy.

Its effect upon the Democratic party. The war had left the Democratic party in such a state of disintegration that it sought to strengthen itself wherever it was possible. Chief Justice Chase was desired by them as a candidate, but his attitude with regard to universal freedom and manhood suffrage did not correspond with the record of the party in recent years. The greenback scheme of Pendleton appealed to the party and made him a formidable candidate before the convention, but the former attitude of the party, in opposition to the issuance of greenback currency, denied it the opportunity to make a campaign upon that issue. The party wisely nominated Horatio Seymour of New York, and made a campaign upon distinctive war issues, the Reconstruction measures of the Republican Congress. This enabled the party to adopt the theory of the rights of the States, the liberty of the individual, and special privileges to none, all of which were Jeffersonian. The Republican convention unanimously nominated General Grant upon a platform endorsing the measures of Reconstruction, and favoring the amendments of the Constitution granting liberty, civil rights, and the rights of suffrage to the freedmen.

Its partizan effect. Thus the war left two distinct parties in existence, the Republican and the Democratic, divided in theory upon lines similar to those that separated the two parties at the beginning of our national history. With regard to the colored man, the Hamiltonian party exercised central authority to the extent of compelling the States to grant liberty and equality to him. The immediate result of this policy was disastrous to the people of the South, and the political result was the deepening of sectional differences which for half a century have produced a "Solid South" and a "United North."

CHAPTER XIX

WAR AMENDMENTS

The free colored population. At the opening of the Civil War the negro population of the United States was about 4,500,000 of which nearly 500,000 were free. This latter class was principally confined to the free States, although from colonial times all the slave States held some free colored people. Their presence in the slave States somewhat complicated the problem. Their number in Virginia, according to the census reports, was as follows: 12,766 in 1790; 20,124 in 1800; 30,570 in 1810; 36,899 in 1820; 47,348 in 1830; 49,852 in 1840; 54,333 in 1850; and 58,042 in 1860. The presence of this considerable element was looked upon as a standing menace to the peace of the community. Sedition was the probable result of a commingling of a free and a slave negro population. It is believed that the various slave insurrections can be traced to the influence of the free negroes.

Negro insurrection. There are at least three historic negro insurrections in the history of slavery in the South. The first is known as the Gabriel insurrection which occurred in 1800, near Richmond, Virginia. About 1,100 negroes took part. It was suppressed and the leaders were promptly executed.

The second insurrection occurred in 1822, in Charleston, South Carolina, and was called the Mesey insurrection, after one Denmark Mesey, a remarkable negro. More than 1,000 negroes came from all parts to form into eight divisions, to do a specific piece of work. By timely effort it was suppressed

and thirty-five leaders were executed, with thirty-four others who were active in the insurrection.

The most important of all these insurrections is the Nat Turner insurrection in Virginia. It attained to such dimensions that both the State militia and a detail of regular soldiers were necessary to suppress it. It was at last suppressed and at least thirty of its leaders were executed.

Effect upon emancipation sentiment. Its effect upon public opinion touching the slave question was significant. Just before the insurrection, a constitutional convention was held in Virginia. For years there was considerable agitation for emancipation in that State. Perhaps one-third of the delegates of the convention favored emancipation. The sentiment in favor of it was pronounced among the delegates. The Nat Turner episode caused a complete facing about. From that time on, instead of measures leading to emancipation, repressive laws were enacted.

Status of the free colored people. The free colored population was not placed upon an equality with the whites. Most of the States denied them suffrage. Tennessee did not forbid it until 1834, and North Carolina permitted them suffrage from 1776 to 1835, when it was withdrawn by the close vote of 66 to 61. In most of the States the free colored people were denied the privilege of citizenship. Some of the States required them to have a guardian. Most of the States forbade their bearing arms, their assembling to teach negroes to read or write, to preach, or to receive Abolition newspapers. Rigid regulation was observed in some of the States against allowing them to buy or sell liquors. After the Nat Turner insurrection, which preceded many of these repressive measures, those States which had permitted manumission forbade it. By 1850 certain States, which had declined to interfere with privileges of the free colored people, enacted a code of laws under the title of vagrancy laws, whereby many of them were sold into slavery as a penalty for violating the laws.

On the 22d of September, 1862, the preliminary proclamation for emancipation gave the slave States then in rebellion one hundred days to lay down their arms. The time brought the limit to January 1, 1863. The States declined to heed the decree, and the final proclamation was made to take effect on that date. By its provision emancipation was extended to 3,063,392 slaves. It did not disturb the slaves in the States which had refused to secede, namely: Kentucky, Missouri, Maryland and Delaware, nor did it apply to slaves in Tennessee, nor in forty-eight counties in West Virginia, seven counties in Virginia, and thirteen parishes in Louisiana. The famous proclamation thus left about 832,000 colored people in servitude.

How emancipation was secured. Emancipation by proclamation had been accomplished as a war measure. President Lincoln had consistently held that the Constitution did not vest Congress with power to free the slaves, but as a war measure the power clearly fell within the executive function. He was charged with the enforcement of the laws of the land. In the interest of the extension of slavery, the States in rebellion forcibly obstructed the laws. In the process of enforcing the law, the President found it necessary to remove the cause, hence the proclamation. Whether such proclamation would have been effective, constitutionally considered, without further action, is not clear. To remove all doubt on the question and give this exercise of executive function the sanction of the Constitution, the Thirteenth Amendment to the Federal Constitution was proposed and ratified by the necessary number of States. Thus by amendment, freedom was made universal in all the States alike, by forbidding involuntary servitude except punishment for crime in the United States.

Ratification of the 13th amendment. This amendment was submitted to the States for ratification, and by December, 1865, twenty-seven of the thirty-six had ratified it. This

number included eight States which had seceded. It will be remembered that President Johnson had reconstructed all the States prior to December, 1865. Congress, however, declined to accede to his plan and finally refused the States representation in either House until they had complied with the demands of Congress. The States were thus regarded as States for the purpose of amending the Constitution, but not for the purpose of legislation. Without the support of these eight States the amendment would not have succeeded.

Interference of Federal legislation. To counteract this legislation Congress enacted the Freedmen's Aid and the Civil Rights Laws. At best these enactments appeared somewhat retaliatory, and tended to estrange North and South, on the same question which led to the war. Congress employed the measure of Reconstruction to compel the States in the South to ameliorate the condition of the freedmen. To this end the fourteenth amendment was drafted. After a bitter struggle both in and out of Congress, it was ratified in July, 1868. As before mentioned, Congress made its ratification a condition for the readmission of congressmen from the States which had seceded. By the force of this enactment a sufficient number of the States ratified it to constitute the necessary three-fourths, provided Ohio and New Jersey (both of which had already ratified, but upon a change of the political complexion insisted upon rescinding its ratification) could not withdraw their ratification. It was decided that when a State had once ratified an amendment it could not withdraw; hence the fourteenth amendment stood as a part of the fundamental law of the land. This amendment was couched in five sections, designed to cover all the points of importance growing out of the altered conditions consequent upon the war.

Citizenship defined. The first section defined citizenship in the United States. It declared, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and the State wherein

they reside." Up to this time citizenship had been regarded the prerogative of the State. Henceforth it took on a national significance. The amendment gave the nation priority. From 1868 citizenship of the United States has depended upon birth or congressional action — naturalization; while citizenship of a State depends upon residence and intention of the citizen. The terms of the amendment include *all persons*. They are not limited by race, color or condition. To this positive enactment there was added a negative provision which forbids the State to interfere with the rights of the citizen. It reads, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Purpose of the first section. The purpose of this section was to prevent such enactments as the Southern States had made at the close of the war, under the name "vagrancy laws," which nullified the provisions of the thirteenth amendment. While the thirteenth amendment freed the slave, the fourteenth endeavored to clothe him with civil rights by making him a citizen, endowed with all the privileges of the whites. This amendment was diametrically opposed to the provisions of the Dred Scott decision. Under its provisions all persons, including men, women, and children, if born or naturalized in the United States, are citizens of the United States and of the State wherein they reside, and no State can interfere with their rights as such.

Apportionment in the Federal convention. The second section of the fourteenth amendment provided for the apportionment of representatives in Congress, by counting the whole number of persons in each State, excluding Indians not taxed. The question of apportionment was a problem in the Federal convention of 1787. In that convention a variety of opinions developed among the delegates.

But finally a compromise was reached. It was agreed that "representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons." This constitutes the famous "three-fifths rule," one of the compromises on slavery in the Constitution.

Two distinctive classes are here included: free persons, and three-fifths of all others. This last class refers to the slaves. From the first, therefore, congressional representation counted five slaves equal to three whites, in estimating population. This continued down to 1865 when the thirteenth amendment took effect. This amendment transferred the slaves from the "all other persons" class to the "free persons" class. Henceforth the freedmen equaled the whites in making up the representation in Congress. This promised augmentation of influence in Congress of the States lately in rebellion, and it was at least a partial cause for the insistence upon a modification of the rule of representation, which found expression in the second section of the fourteenth amendment.

Second section of fourteenth amendment. This section provides that representatives shall be apportioned according to population, excluding Indians not taxed. This leaves the rule as the thirteenth amendment left it. But this second section also provides that when the right to vote at any election for the electors for President and Vice-President, representatives in Congress, the executive or judicial officers of the State, or members of the legislature, is denied to any of the male inhabitants of such State of twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation shall be reduced in the State so denying, in proportion which this number shall be to the whole

number of male citizens of twenty-one years of age within the State.

Two views. There are at least two classes of opinions relative to this section. One class holds that the purpose was to confer the right of suffrage upon the freedmen. The other holds that it was designed to reduce the representation in Congress of the Southern States. The option was left to the States, either to extend suffrage to the freedmen or have their vote reduced in Congress. The first position argued that restrictive measures in the Southern States designed to reduce the freedmen to a state of slavery from which the war had freed them, were beyond a remedy by the national government; that the only recourse was to place the ballot in the hands of the persons at whom such repressive measures were aimed. The fact that the freedmen owed their status largely to the Republican party indicated that their vote would give that party a great advantage and this obviously influenced the activity of certain leaders of the party in the extension of suffrage to the freedmen.

Fourteenth amendment and negro suffrage. On the other hand, the three-fifths rule has been regarded by statesmen as an unfair basis of representation. The compromise has been held as a one-sided adjustment, owing to the fact that the direct tax upon which the compromise was built has never been a policy of the government. It has thus increased the congressional influence of the South, without a corresponding burden in taxation as was expected at the time of the Federal convention. The thirteenth amendment eliminated the three-fifths rule, by adding two-fifths to the three-fifths, or by counting all the slaves instead of three-fifths of them. By this method the abolition of slavery under the Constitution had materially increased the power in Congress of the States which had seceded. In other words, the white man in the South in many States had double the power of the white man in the North. The second section of the fourteenth amendment

sought to correct this feature. It neither extended suffrage to the freedmen nor reduced the basis of representation, but submitted the alternative to the States to do the one or the other.

Opinion in the South. The Southern States were not inclined to do either. They objected to the national government's interfering with the question of suffrage, which from the foundation of the government had been left to the States. This they held was an unwarranted interference with the rights of the States. Here they failed to distinguish a statutory enactment from a constitutional pronouncement. The first is the function of the law-marking power, the second is the prerogative of the people themselves, above which there is no authority. The South also felt that the freedman should be enumerated in making up the basis of representation; that he should not be excluded on the ground that he was not a voter any more than the women and children should not be excluded because they were not voters. Suffrage was withheld from the freedmen, and the representation was not reduced because before it could be done, the fifteenth amendment had been proposed and ratified by the necessary three-fourths vote of the States. This amendment did not nullify the fourteenth amendment, but it partially removed the occasion which called for it.

Iron-clad oath. The third section of the fourteenth amendment constituted what is known as the "iron-clad oath." It refused office, either national or State, to any one who had previously taken an oath to support the Constitution of the United States, and afterward engaged in rebellion against the government. It provided for the removal of this disability by a two-thirds vote of each House. By this section a very considerable portion of the well-informed men of the Southern States was disfranchised. The number thus disfranchised has been variously estimated as between fourteen thousand and thirty-five thousand. It was to this section President

Johnson referred in one of his messages when he claimed that the purpose of the fourteenth amendment was to enfranchise the black and to disfranchise the white population of the Southern States, thereby reversing the position of the races. On the other hand, a majority of Congress professed to believe that the government had displayed the rarest magnanimity in limiting its demands to so light a punishment and to so small a number, for the crime of rebellion. They called attention to the fact that the great body of citizens were not affected by the amendment.

Repudiation of the Confederate debt. A fourth section of the amendment provided for the validity of the national debt contracted in the prosecution of the war to suppress the Rebellion, and for the repudiation of the Confederate debt contracted in aid of the Rebellion. The former clause of this section was designed to prevent the States from repudiating the claims of the national government in the form of pensions, bonds, treasury notes, etc., entailed by the Rebellion. The latter clause was designed to provide against answering to any claims based upon the loss of property in the emancipation of the slaves and the destruction of various forms of property in the prosecution of the war. A fifth section of the amendment gave Congress power to enforce the preceding sections. This fifth section is generally regarded useless, on the ground that Congress would have that power without its expressed delegation. This rule of interpretation, which is Hamiltonian, has been followed by all political parties.

The fifteenth amendment. The thirteenth amendment was designed to extend freedom to the slave. The fourteenth was designed to clothe him with citizenship. It also conditionally provided for his suffrage. In the judgment of at least two-thirds of Congress neither the one amendment, nor the other, nor both together afforded the negro the necessary means to enjoy his freedom. It could scarcely be expected that the people in the South would quietly submit to the changed condi-

tions entailed by the war and the amendments. At least they did not submit. Their opposition, whether excusable or not, was strong enough to neutralize the force of both amendments. To counteract this opposition the fifteenth amendment was proposed and ratified by the necessary three-fourths of the States. It declared, "The rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude." It authorized Congress to enforce the article by appropriate legislation. This amendment was formally announced by the Secretary of State on the 30th of March, 1870. It will be observed that it forbade either the State or the nation to deny or abridge the right of suffrage to any citizen on account of race, color, or previous condition of servitude. It will also be observed that the protection is limited to citizens of the United States. The Chinese or other persons who cannot become citizens, are excluded from the force of this amendment. The amendment does not confer suffrage, but it simply forbids its abridgment on certain grounds. The specific purpose was to arm the freedman with the ballot.

Carpet-bagger and Ku-klux Klan. Under the force of these amendments the "carpet-bag régime" was ushered in. In some of the States, if not in most of them, the negro secured control of the machinery of government. Various methods were employed to forestall such a consummation. Fraud was employed freely in places. In others the negro was hired to remain away from the polls. Secret organizations, such as the famous Ku-klux Klan and the White League, sprang up. Congress attempted to suppress them by enacting an enforcement law in 1870. This law was followed by another placing congressional elections in cities of 20,000 and over under Federal supervision. Thus by the aid of the national government, these former slave States under the amendments were quite generally in the hands of the former slaves who were

assisted by an element of the white population, much of which was from the North. This condition was intolerable to what would be known as the better class in the South. It accentuated racial differences, and ultimately solidified the white against the black.

Partizan effect of fifteenth amendment. In places where the negro predominated, the people experienced carnivals of corruption. Their inexperience and inaptitude soon brought the States to an intolerable condition. This régime continued for some time. The Republican party, which had secured to the negro the rights conferred by the three amendments, had but a temporary advantage from this enlarged electorate. It was enabled to carry the States in the South for a time but it was destined to lose them ultimately. In 1868 it carried Missouri, Arkansas, Tennessee, Alabama, Florida, South Carolina and North Carolina. In 1872, with the force of the fifteenth amendment, the Republican party carried Mississippi Alabama, Florida, South Carolina, North Carolina and Virginia. By 1876 it had lost all these States except Louisiana, Florida and South Carolina. The election in these three States was claimed by both the Republican and the Democratic party. This change was brought about in various ways: by all the whites uniting on the race issue, by inducing the negroes to remain away from the polls on election day, and by fraud and violence.

Limitation of suffrage. Many States have succeeded in limiting suffrage to persons possessing certain qualifications, so as to almost entirely eliminate the negro vote. Mississippi limits the privilege of voting to those who can read and understand any clause of the Constitution of the United States and who have paid a poll tax. Alabama limits the privilege to soldiers and descendants and persons of good moral character and those who understand the duties of citizenship under a republican government. After 1903 suffrage was limited to those who could read the English language intelligently

and who were regularly employed in some lawful occupation and owners of property valued at three hundred dollars. South Carolina limits it to those who can read the Constitution of the United States and explain it, and to the owners of property valued at three hundred dollars. Louisiana limits it to those who can read intelligently, and who own not less than three hundred dollars' worth of property, and have paid their taxes. It provides that these limitations shall not apply to male persons who were entitled to vote in 1867, nor to their descendants. This is the "grandfather clause." North Carolina requires an educational qualification, and has a "grandfather clause" similar to that of Louisiana. Virginia prior to 1904 limited suffrage to soldiers, their sons, owners of property to the value of three hundred dollars, and persons who can understand the Constitution of the United States. Since 1904 it has been limited to persons who have paid their poll tax and can make application in their own handwriting without aid. These Virginia qualifications do not apply to soldiers in either army. This last is called the "veteran clause."

Legality of restrictions. Other States have qualified the privilege of suffrage. Some of them require both educational and property qualifications. Others require one or the other. None of them violates the letter of the fifteenth amendment. Those which have the grandfather clause violate at least its spirit. Those which require the ability to understand the Constitution of the United States, as a qualification for voting, can be so applied that the whites will be admitted and the blacks excluded. It now appears that these laws are within the letter of the Constitution and it remains to be seen whether the violation of the spirit of that instrument is sufficient to induce the Federal Supreme Court to nullify them.

The slaughter-house case. Light is thrown upon the subject by various decisions of the Supreme Court, touching the amendment. The first was the slaughter-house case. The

State of Louisiana had given to certain companies exclusive privilege of carrying on the business of slaughtering animals. Action was brought on the ground that such a grant abridged the right of citizenship conferred by the fourteenth amendment. The case went to the Supreme Court which decided that it was a question for the State and denied that such action abridged the immunities of citizens of the United States. Whether it abridged the privilege of citizens of the State was a question for the State to decide. The Court affirmed that the object of the amendment was not to take away rights or privileges from the States, but to confer certain rights upon a class up to this time denied such privileges or rights. It said that to confer rights upon the blacks did not deny other rights to the whites.

The Minor case. Another case touching the question was brought by a Mrs. Minor of Missouri. It grew out of a refusal of the officers of election to allow this lady to vote for the presidential electors. She brought action against the officers on the ground that her rights as a citizen under the fourteenth amendment had been abridged. Justice Waite rendered the decision in which there was a unanimous concurrence of the Court. It followed the reasoning of the slaughter-house case. It declared that Mrs. Minor had been a citizen prior to the passage of the fourteenth amendment. As such, under the laws of the State in which she lived, she was not entitled to a vote; the fourteenth amendment did not confer upon her what she did not have before, but simply protected her in what she enjoyed. It declared that suffrage was not one of the privileges or immunities referred to in the Constitution; that suffrage was a matter for the State, not the nation.

Cruikshank case. The Cruikshank case in 1875 was one of the most important because it touched the sensitive question of the jurisdiction of the Federal government on the matter of voting. Cruikshank and others had been convicted in the Federal courts on a charge of conspiracy to deprive certain

persons (negroes) from exercising their lawful right to vote. The Supreme Court held that the right to vote was a State privilege, not a national right; if the conspiracy had been against the persons on the account of race, color, or condition of servitude, then the violation would have fallen under the jurisdiction of United States. The Court repeated its former opinion that the amendments primarily granted nothing but aimed to protect what the citizens rightfully possessed. In the Reese case the Court declared that the fifteenth amendment did not confer suffrage, but provided against discrimination on account of race, color, or previous condition of servitude.

Other cases. Later, cases came before the Supreme Court which involved the question of discrimination against the negro in the selection of a jury. In West Virginia the State provided that jurors could only be selected from white male citizens. This law was declared by the Supreme Court of the United States to be a discrimination, and in violation of the fourteenth amendment. In Virginia there is no such law. The Supreme Court denied the prayer of a negro against being put on trial before a jury of white men, on the ground that it was not necessarily a discrimination.

Civil Rights bill. The Civil Rights bill of 1875 was designed to confer upon negroes equal privileges in hotels, public conveyances, etc. The Supreme Court pronounced this law unconstitutional on the ground that the amendment applied only to States, not to individuals; the State had not passed any laws regulating these privileges. It further declared that the privileges in question were not comprehended in the terms "privileges" and "immunities" as used in the Constitution.

The tendency of Federal decisions. This line of Federal decisions, instead of denying the principle of State rights, has largely augmented it. It has clearly marked out the two fields of operation, State and national, and has discriminated between the granting power, which is largely in the States, and the protecting power, which is as largely in the nation. It has

left privileges where it found them. It shows the purpose of the amendments was not to augment privileges but to protect them. The thirteenth amendment did not pretend to grant freedom, it simply denied to any State the right to continue slavery. The fourteenth amendment did not grant citizenship, most of the population of the States already enjoyed it; but it denied the power to any State to abridge it. The fifteenth amendment did not grant suffrage, but denied to any State the power to refuse it to any person on account of race, color, or previous condition of servitude.

Still unsettled. This view of the amendments will admit of an explanation of the seeming conflict between the Federal Constitution and the State constitutions which have abridged the suffrage privilege. So long as this limitations is not put on the ground of race, color, or previous condition of servitude, the States are within the constitutional limit. Whether limitation of the right to vote can be so made as to apply only to the negro, without touching the white man and still be within the Constitution is yet a question. The "grandfather clause" attempts to reach this result. Down to the present time (1906) this question remains unadjudicated.

Constitutional sanction against statutory enactment. There is one other consideration growing out of the fourteenth amendment. When the States limit suffrage, as many have already done, will not the representation in Congress from that State be reduced? Not necessarily. The distinction between constitutional law and statutory enactment must here be made. The former is found in the Constitution and is made by the people, while the latter is found in the statute books and is made by the government. The former is really a dead letter until enforced by the latter. For example, the Constitution provides for a Senate and a House of Representatives. But without provision of Congress to put the machinery of both in motion, there would really be neither. So likewise the fourteenth amendment provides for a reduction of representa-

tion in the lower House in case the right to vote is denied. But without an enactment by Congress to enforce this provision, it is a dead letter. Therefore, no matter how great the limitation of suffrage in the State, its representation will not be reduced unless Congress reduces it.

The effect of the amendment. Many people think the fifteenth amendment was a great mistake. At least it would appear that wisdom would have dictated some qualification for the exercise of the ballot. Whatever the past, the negro is here and here to stay. The two races will continue separate races. They should be friendly and every facility should be granted for their future welfare. The effect of these amendments was a complete elimination of political and economic issues, and an alignment upon a racial basis. The Republican party, having prosecuted the war and secured the constitutional changes in the status of the slave, by which he first became a freedman, then a citizen and then a voter, won his support. On the other hand, the Democratic party, having freely criticized Lincoln's war policy, the Reconstruction policy of Congress and the amendments, lost the black vote, but won the solid white vote of the former slave States. Ere long the division was not Republican versus Democratic, but black versus white. This fact continued the race question as the leading one. It perpetuated the war feeling long after the war was ended and its results generally accepted. It continued a form of sectional strife and made possible a solid South and a united North. This unhappy situation is based upon a political error implying that the interests of the two peoples are antagonistic, rather than mutual. The force of this error is noticed in the complaint from the South that it has been compelled to do penance for forty years with little hope of future relief. For half a century after the opening of hostilities between the two sections, neither party has gone to the South for its presidential candidate. In that respect, the South is as a foreign country. However, this aspect is not

observed in the organization of Congress — in the appointment of the various committees in the two Houses, in the selection of the Federal judges, and in presidential appointments, such as foreign ministers, Cabinet officers, etc.

This discrimination will grow less and less through the rapid flow of population and the organization of industries, movements which combine all sections in one people. A better understanding of the rights of both races, of their mutual relations, and a clearer conception of the oneness of all the interests of all the people, point to a total obliteration of sectional feelings engendered by civil war.

CHAPTER XX

PARTY ISSUES SINCE THE CIVIL WAR

The party of strict construction. The war and its consequences determined the political issues for at least twenty years after its close. The heat of civil strife fused all partizan elements into two divisions. These divisions aligned along the principles which originally divided the country into parties, namely, strict construction and loose construction. They coincided in name with the Democratic and Republican parties. This division was rational, both from a theoretical and an historical position. Historically, the Democratic party, standing for the largest liberty in both the individual and the State (not including the negro), is a strict construction party. Its theory would compel it to confine the exercise of power within the expressed authority of the Constitution. Also its position as a party out of power logically compelled it to accept the strict construction view of the Constitution, and for the same reason to take a negative, rather than positive, stand upon public issues.

The party of loose construction. On the other hand, the Republican party, the successor in political theory of the Whigs, who had been the successor of the Federalists standing for authority in government, is a loose construction party. Its theory would not admit of constitutional scruples in necessary legislation, but it would employ implied as well as expressed powers to secure such legislation. Also its situation as a party in power logically compels it to adopt the loose or

broad construction of the Constitution, and for the same reason to take a positive rather than a negative stand on public questions; hence the oft-repeated charge that the Democratic party is destructive in character, while the Republican party is constructive. This classification largely holds true since the war. However, before the war, the opposite was true. The positive and negative character of parties is not due so much to their theories, as to their situation.

Issues. The prominent issues since the war are comprehended under the following heads:

1. Those which grew out of the war as necessary consequences.
2. The Financial Question.
3. The Tariff Question.
4. The Civil Service Question.
5. Foreign Relations.
6. The Expansion Question.
7. The Trust Question.

Under these various captions can be classed most of the important issues which have attracted the attention of the country since the close of the Civil War.

Issues which grew out of the Civil War. Under the first head come the Reconstruction measures, the thirteenth, fourteenth and fifteenth amendments, and the status of the freedmen. Also certain phases of the currency question which grew out of the war, such as the large issue of Bonds, the Legal-tender Acts, the National Bank Act, the Resumption Act, the sectional issue as expressed in the secret organizations in the South, the Enforcement Act, commonly called the "Force bill," the act placing congressional elections in cities of a certain size under Federal control, and the Civil Rights Law which was afterward pronounced unconstitutional by the Supreme Court of the United States.

Phases of the financial question. The financial question in the United States has appeared in numerous phases, under many forms, and on many different occasions. It compre-

hends the establishment of the banking business, the history of the coinage question, the issuance of the United States notes commonly called the Greenbacks, the Legal-tender Acts, the resumption of specie payments, the issuance of gold and silver certificates, the issuance of the Sherman Treasury notes, as well as various other forms.

The National Bank. From 1836 to 1863 there were no National Banks in existence. Banking business was carried on by State institutions. In the latter year the present national banking system (1906) was adopted. It provided that any five persons may establish a National Bank. At first the minimum capital was placed at $50,000; later it was reduced to half that sum. It provided for a bank currency by issuing to the Bank, upon its deposit of national bonds with the comptroller of the currency, bank notes. At first these notes were not to exceed ninety per cent of the bonds deposited, but later this was increased to one hundred per cent. The notes are secured by the government and are receivable in payment of taxes. A large amount of the country's circulating medium is made up of these notes.

Unfortunate features. Certain features of the present banking system, as represented in the National Bank, subject it to severe attacks from its enemies. The fact that it receives an interest upon its bonds deposited with the comptroller of the currency, and also upon the loans which it makes, renders it subject to the charge of receiving double interest at the expense of the public. Also the fact that its very existence rests upon a deposit of United States bonds, makes a national indebtedness necessary for its continuance. This feature has always been unfortunate. It leads to the conviction among many citizens that our indebtedness will never be relieved so long as such a powerful factor as the National Banking business owes its life to the continuance of that indebtedness.

Legislation since the war. In 1873 gold was made the standard of value, and silver was coined as subsidiary coin

which was limited as a legal tender to small sums. The silver dollar, known as the trade dollar, was provided with 420 grains, heavier than the old silver dollar which contained only $412\frac{1}{2}$ grains. This trade dollar, intended to meet the competition with the Mexican dollar of 416 grains, was discontinued as a legal tender in 1877. The next year the Bland-Allison Act resumed the coinage of the silver dollar of $412\frac{1}{2}$ grains, and made it a legal tender for all debts. It also required the treasury to purchase and coin not less than $2,000,000 nor more than $4,000,000 worth of bullion per month. The next year, 1879, subsidiary silver coins were made a legal tender for an amount of ten dollars. In 1890 the act of 1878 was repealed, and the treasury was directed to purchase each month 4,500,000 ounces of silver bullion at the market price, in payment of which the government issued treasury notes. In 1893 the purchasing clause of this law was repealed.

Coinage a party issue. In 1896 the campaign between the Republican and the Democratic parties was conducted upon the silver question. Prior to this date, efforts had been made to commit the Democratic party to the free coinage of silver. Mr. Cleveland, then the controlling personality of the party backed by the Eastern States, prevented the party from taking such a position. By 1896, through the almost united West and South, the Democratic convention adopted a platform declaring against monometallism and in favor of bimetallism, that is, against the use of but one standard in favor of a double standard. It declared that both gold and silver were the money of the Constitution, and the Act of 1873, which made gold the standard, was a crime against the people of the United States. It pronounced in favor of the "free and unlimited coinage of silver and gold at the present legal ratio of sixteen to one without waiting for the aid of consent of any other nation."

Republican position. The Republican party had already taken its position on the money question. Some time before the convention met, it was conceded that the money question

was to cut an important figure in the campaign. Ohio, McKinley's State, met in State convention in March, and adopted a plank declaring for the use of both gold and silver as standard money. It demanded such legislation either by international agreement or restrictions of law as would insure the parity of both metals. In its national convention, the party declared in favor of "sound money." It pronounced against the free coinage of silver, except by international agreement, and pledged itself to maintain the gold standard until such an agreement could be reached. It also pledged itself to maintain the parity of value of gold, silver and paper.

Campaigns of 1896, 1900. Upon this issue was conducted the whirlwind campaign that has gone into history as the Bryan Silver campaign. Aside from the Hard Cider campaign of 1840, it was the most exciting and spectacular campaign in the history of American politics. It resulted in a contest between the Eastern and central States on the one side, and the Western and Southern States on the other. It called out nearly 14,000,000 votes, with McKinley leading by a plurality of over 600,000. In 1900 the issue was again fought out between the two parties led by the same candidates. The results indicated that the silver issue had lost its hold upon the voter. In the campaign of 1904 the money question did not appear in the discussion.

Situation in 1860 — its relief. The financial situation at the opening of the war was unfortunate. The treasury was empty, without enough money to pay the salaries of members of Congress. The nation's credit was not good, as indicated by the government offering to pay twelve per cent interest on bonds issued for the purpose of defraying running expenses. The exigencies of war rendered it necessary to secure an additional circulation. To meet the demands the treasury notes, popularly called the "greenbacks," were issued. In July, 1862, the first issue of $150,000,000 was made. Subsequent issues aggregated $300,000,000 more, making a total of

$450,000,000 of these notes. Besides, the issue of $50,000,000 of fractional currency was ordered to take the place of fractional silver coins which had ceased to circulate. In 1866 the total amount of the "greenbacks" was reduced to $356,000,000, and in 1878, $10,000,000 more were retired, leaving the total amount in circulation $346,000,000. These notes were made legal tender for all debts, public and private, except duties on imports and interest on the public debt.

Constitutionality of the "greenbacks." The legal-tender phase of these notes was bitterly contested both on economic and constitutional grounds. Opposition on the former ground only could assume a partizan phase. Its effectiveness was limited to the measure of public opinion upon the issue. The latter ground was less affected by public opinion, and was fought out in the courts instead of the forum. The first case to test the constitutionality of the notes was that of Hepburn versus Griswold, in 1869. The court by a divided vote, four to three, decided that the notes were constitutional in so far as they did not apply to contracts made prior to the enactment of the Legal-tender Act. The second case was that of Knox versus Lee, in 1870. In the meantime the court had been increased by the addition of Justices Bradley and Strong vice Justice Grier, resigned. In this case, the decision by a majority of the judges, five to three, upheld the constitutionality of the act, as applied to pre-existing debts as well as to subsequent contracts. Still a third case, Juilliard versus Greenman, by a unanimous court save one, held that the act applied to private debts in peace as well as in war.

Resumption of specie payments. Two days before the introduction of the Legal-tender Act specie payment was suspended. The greenbacks were refused acceptance, in many cases, in payment of debts. Their value generally declined, or gold generally went to a premium. This decline continued until the fiat currency had but 37 per cent purchasing power. In other words one dollar of United States notes

(greenbacks) purchased but thirty-seven cents in gold. Notwithstanding this decline, the greenback became an exceedingly popular currency with a portion of the people. Every effort to retire it was fiercely contested. The industrial interests anxiously sought a resumption of specie payment. Finally on the 14th of January, 1875, an act was passed fixing the first day of January, 1879, as the date when the government would resume specie payment.

Effect of resumption. A variety of opinions existed as to the meaning of resumption. The commercial interests expected the retirement and cancellation of the greenback notes. There was a considerable portion who believed in fiat money and desired not only a continuance of this circulation, but insisted upon an increase issue at stated periods. Senator Sherman and a large body of his followers insisted that resumption did not involve the cancellation or retirement of the greenback, but an appreciation of their value to par, equal to coin. To do this the government proposed to hold itself responsible for the ready exchange of coin for the greenback. By this means the contraction of the currency was forestalled. The confidence in the ability of the government to resume specie payment brought the greenback to par value. To provide against a possible contraction, it was enacted that when the greenback note had been redeemed in gold, it should again be paid out. This one feature served to draw out the specie of the treasury. During a financial fight, such as that of 1893, the holder of the greenback could take his bill to the treasury and have it exchanged for gold. The government under the law paid out the bill for service in order to prevent contraction of the currency. The receiver readily accepted it, which could be again redeemed in gold. In this manner a single bill could draw from the treasury a large amount of its specie. This feature was corrected later by a measure providing that when the government received the greenback, it could pay it out for gold only.

The silver agitation. Prior to the year 1896, silver as a medium of exchange had not assumed a partizan bias. The silver dollar of 412½ grains had not been in general use. Only a little over 8,000,000 of them had been coined between 1792 and 1873. In the latter year this dollar was dropped from further coinage. This act was denominated the "crime of 1873," on the ground that it was surreptitiously done. The trade dollar was a response to the demand for ability to compete with the Mexican silver dollar. Its issuance did not create a party issue. The attempt to secure the free coinage of silver in 1878, which resulted in the enactment of the Bland-Allison Act, as before mentioned, divided the country, less on party lines, however, than on geographical lines. It was really a division between the East and the Middle West on the one side, and the West and the South on the other. The Sherman law of 1890 further accentuated this division. The Democratic party began to show, in its various State conventions, a friendly spirit toward silver. The special session of Congress in 1893, called by President Cleveland, further marked this alignment. Although the Democratic President recommended the repeal of the purchasing clause of the Sherman law, the party showed some reluctance. By 1896 the free coinage of silver became the paramount issue between the two parties. While the Democratic party adopted it as its issue, many prominent members of the party repudiated both the issue and the candidate. The same situation obtained in 1900. It did not prevail in 1904. However, the geographical division largely existed. The West favors free coinage, while the money centers of the East oppose it.

The Tariff an issue. The Tariff question assumes at least three forms, namely: tariff for revenue only; tariff for revenue with incidental protection; and tariff for protection. The first form is the distinctive Democratic position; however, many distinguished Democrats have repudiated it for the sake of the second. The third form was the Whig position, and is

now the Republican, although many distinguished members of the party have repudiated it for the sake of the second.

The real issue. The real difference as a partizan issue lies in that between a tariff for revenue only and a tariff for protection. This issue did not divide the parties at first. In fact one of the earliest enactments of the government was a measure based upon the protection idea. It came from Hamilton. In 1816 the tariff law represented the protective idea and was really a Democratic measure. But in 1824 the protective idea began to reveal a geographical division of opinion. The South generally opposed it, while the North, especially New England, favored it. This division was soon identified with that between the Whigs and the Democrats. The "American system," as its friends were pleased to call it, was adopted in 1828 by the National Republicans, who became the Whigs. In 1832 it was reaffirmed, but was modified the next year on account of the grave situation occasioned by the conduct of South Carolina under the influence of Vice-President Calhoun.

Its progress. By the compromise of 1833, duties were gradually reduced to a revenue basis by 1842. In 1846, under the influence of Secretary Walker, a new tariff was enacted, based on the revenue, rather than on the protective, idea. This law was followed in 1857 by a further reduction of duties, until the "American system" had been displaced by the "revenue only" system. In 1861, under the Republican régime, the Morrill tariff bill revived the protective feature which still continues as a governmental policy. Various efforts have been made to abandon it, but without success. In the struggle the Democratic party endorses the "revenue only" principle, while the Republican party stands upon the protection principle. The platforms of the two parties pronounce upon the issue. The McKinley law of 1890 was distinctively a protective measure and it met with strenuous opposition from the Democratic members of Congress. The

Dingley Act later reaffirmed the protection principle, and the Democratic members again valiantly fought its adoption. The Democratic national convention in 1868 adopted a plank declaring for a "tariff for revenue upon foreign imports, and such equal taxation under the internal revenue laws as will afford incidental protection to domestic manufacturers, and as will, without impairing the revenue, impose the least burden upon, and best promote and encourage the great industrial interests of the country." In 1872, in the Greeley campaign, the convention agreed to remit the discussion to the congressional districts. In 1876 the Democratic convention denounced the then existing tariff as a "masterpiece of injustice, inequality, and false pretense." In 1880 the Democratic party declared for the "tariff for revenue only." In 1884 it denounced the then existing tariff and demanded a revenue system, which would collect only what was necessary to administer the government economically. In 1888 the Democratic party demanded tariff reform. It pronounced the Republican system unjust, but it did not pronounce in favor of a specific revenue basis. It demanded a tariff that would make "due allowance for the difference between the wages of American and foreign labor." In 1892 it denounced "the Republican protection as a fraud, a robbery of the great majority of the American people for the benefit of the few." It took the Calhoun view, that a tariff for protection was unconstitutional. It also declared that the McKinley Tariff Act was the "culminating atrocity of class legislation." In 1896 it denounced the tariff as a prolific breeder of trusts and monopolies which enriches the few at the expense of the many. These views were reaffirmed in 1900 and in 1904. While in every campaign this question has been more or less discussed by the ruling parties as an issue between them upon the ground of party policy, the real point of difference is a constitutional one. The Democratic party has opposed the principle of protection on the ground of its discrimination feature. It

declares that it favors one interest as against another, or one section as against another; neither of which, they affirm, is warranted by the Constitution. On the other hand, the Whigs first, then the Republicans, declared the protection principle to be for the general welfare of the people, and therefore within the sanction of the Constitution. Upon this line of discussion the issue will be determined.

Civil service reform. The spoils system appears to have been a logical consequence of the partizan system of government. Its advocates assert that it is essential to party organization, to a wide-awake interest in public questions, to effectiveness in the conduct of great campaigns. They defend it on the ground that a desire for place is a laudable ambition, and that no set of men should hold a monopoly of the offices. They justify the system on the principle that in a great party contest in which all the people are arrayed in battle, the side that wins should be put into possession of all the offices, both large and small. The opponents of the system hold that civil service is a public trust, not a party perquisite, that selections should be made upon the ground of personal fitness, not personal favoritism. They pronounce against congressional dictation, arbitrary removals, senatorial usurpation, and political assessments, all attendant upon the spoils system. They demand a competitive system for appointments instead of personal favoritism.

Its history. In 1789 the first Congress placed the sole power of removal in the President, which gave him control of a small army of office-holders. In 1820 another act vacated certain offices within its scope at the end of four years, and empowered the President to fill them at his pleasure. The abolition of the congressional caucus and the substitution of the delegate convention system gave the Executive still further influence over patronage. By the inauguration of Jackson, the spoils system swept the country. The principle "to the victors belong the spoils of office" became a fixed practise of the

country. At the close of the Jackson régime the Whigs adopted it. Webster as Secretary of State endeavored to stem the current but without avail. Crittenden, the Attorney-General, declared that nothing short of a miracle could feed the hungry office-seekers. With the lapse of time the system became the practise as well as the theory of all parties.

Necessity of reform. The Civil War and its effects made necessary some changes in the matter of civil service. The war largely increased the patronage of the President. The singular alignment of the political parties upon the war issue identified the party in power with the speedy prosecution of the war, which was synonymous with patriotism, and the party out of power with the reverse. This fact practically closed the offices to all but members of the Republican party. The system converted politics into place hunting, and the practise extended to all divisions, national, State, municipality and county. It repudiated the practise of every business concern, of seeking only the best fitted incumbent for the place, and continued to require but the one credential, that of undying loyalty to party. In 1865 Mr. Jenckes, of Rhode Island, introduced his first measure in Congress to reform the civil service, but all attempts in this direction were futile. In 1871 the President was authorized by Congress to prescribe rules for admission to the civil service. A commission was created with George W. Curtis at its head. This commission attempted to substitute fitness for party loyalty. The commission died for want of support. In 1883 the Pendleton Act was passed. By this act a commission was created representing at least two parties. It was authorized to provide for competitive examinations for entrance to the civil service. It was left to the President to designate the class of service to which the examinations should be applied. President Arthur applied this law to the various departments of the government and it has since been extended by Cleveland, Harrison, McKinley and Roosevelt, until at the present time the cus-

tom of holding examinations of applicants applies to most of the service in the government.

As an issue. The character of civil service as a political issue does not permit of a contest upon principle. It will be fought out between the *ins* and *outs*. Those in power will always be guilty of violations of civil service rules, while those out of power stand ready to denounce such violations. Changes of administration, from one party to the other, work changes in the political practise of each party, as in the case of the Whig party during the Jackson régime, when it denounced the spoils system and upon reaching control adopted the practises it had denounced. After the Civil War the Democratic party denounced the character of appointments by the Republican party, in every campaign from 1868 down to the election of Cleveland in 1884. It was the main feature of the Greeley campaign. The government under the Roosevelt régime took a long step in the direction of practical efficiency at the expense of party loyalty.

Foreign relations. It matters little what may be the cause of dispute between this and a foreign nation. National pride is invariably stronger than partizan bias. However fierce the party contest may be at home, the indication of foreign interference is sufficient to break down partizan opposition to measures designed to maintain national honor. Our foreign policy is comprehended in two principles; neutrality as expressed by Washington, and non-interference as expressed by Monroe in his Doctrine. The first insists upon this nation's allowing foreign countries to look after their own affairs without meddling on our part, and the latter insists upon all foreign nations' withholding interference in matters pertaining to the Western continent. The Yankee interpreted it to mean that we should attend to our own business, and allow all foreign countries to do likewise. Upon these two propositions there is little party difference, but occasions for apparent infringements have not been wanting.

The expansion question. This question naturally divides parties. Prior to the Civil War the position was the reverse of what it has been since the war. Louisiana was purchased by the Democrats under Jefferson against the fiercest opposition from the Federalists. In 1819 Florida was acquired by the same party under Monroe, in opposition to the remnant of Federalists. Texas, in 1845, was annexed by the Democratic party under Polk, in face of the most strenuous opposition from the Whigs. Oregon was occupied at a time when the Democratic campaign cry was "Fifty-four forty or fight." The vast Southwest was added to our domain under Democratic auspices. More than once the Democratic party declared in its national platform the wisdom of securing the island of Cuba, and the Ostend Manifesto indicated its willingness to adopt questionable means to acquire it. To all of their various measures of expanding the national domain, the Democratic party had the opposition of the party out of power.

Since the Civil War. Alaska was added in 1867 by Secretary Seward. The purchase was ridiculed, and Seward was condemned as an incompetent official. In 1869 General Grant sent a commissioner to San Domingo to report on the advisability of annexing that island republic to the United States. Upon the report a treaty was drafted. It met with opposition in the Senate, however, and failed of ratification. Another commission reported favorably on the same project, but Congress again rejected the annexation. This latter vote, however, did not reveal a distinct party issue. In 1893 a treaty for the annexation of Hawaii giving the United States sovereignty over the islands and the various dependencies was made. The government of the United States agreed to pay $3,250,000 of the Hawaiian debt. A change of administration consequent upon the defeat of Harrison forestalled the ratification of the treaty and it was withdrawn by President Cleveland. A new treaty of annexation was made in

1898 under McKinley which was successful, and the Islands became a part of the United States.

The Spanish-American War. By the treaty closing the War with Spain, the United States came into possession of Porto Rico, the Philippine Archipelago, part of the Ladrone Islands, and sovereignty over the island of Cuba. This treaty furnished new problems of expansion which were discussed on partizan lines. In both 1900 and 1904 the Democratic party made the questions growing out of these relations the paramount issue of the campaign. It is thus noticed that, prior to the Civil War, expansion of the national domain was accomplished by the Democratic party in the face of opposition from the Federalist and Whig parties, and since the war it has been conducted by the Republican party in the fiercest opposition from the Democratic party. While it is true that the character of expansion since the war is not the same as that before the war, it is also true that the question of expansion is an issue between the *ins* and *outs*, rather than between Democrats and Whigs, or Republicans and Democrats. Policies frequently make parties, rather than parties make policies.

The trust question. Since the Civil War, organization has revealed itself in the contest between labor and capital. The latter has pursued the industrial maxim, " where combination is possible competition is impossible." The impulse to combine has reached many of the productive facilities of the country, until specific lines of business, such as coal, oil, meats, transportation, etc., are confined to a few men, who maintain a practical monopoly of the business. This organization of industry has taken a political coloring. Investigation has brought to light the fact that these various corporations have contributed greater or less sums of money to political parties in the conduct of their campaigns. These investigations proved also that corporate influence has operated in legislative matters in some of the States. With the organization

of industry the organization of labor has kept pace. Both of these interests avoided separate political action. Later, labor sought independent action and pronounced against monopolistic tendencies. The Greenback party went on record in opposition to banks and the issuance of bonds, on the ground that it fostered a money class to the detriment of the general welfare. The Democratic party charged the Republican party repeatedly with fostering class legislation in its tariff policy. It held the Republican party responsible for the existence of trusts built up by legislation of favoritism. On the other hand, the Republican party enacted both in State and nation anti-trust legislation, such as the Sherman Anti-Trust law and the Elkins law. The People's party, better known as the Populist party, and the various Labor and Socialist parties have pronounced in favor of Federal control, if not Federal ownership, of the productive utilities. This position has been greatly strengthened by the Rooseveltian régime, which has placed many interests under Federal regulation. During this régime a new force has come into politics making partizan affiliation count for less and less, while independent politics has taken on a new life, necessitating other alignments.

CHAPTER XXI

OBSERVATIONS UPON THE ELECTION OF PRESIDENT

Strong Executive feared. Few subjects discussed in the Federal convention offered a wider variety of opinion than that of the Federal Executive. The experience of the framers of the Constitution had been with governmental despotism in the executive head of the nation. George III was not the anachronism modern opinion regards him. He well represented the ruling heads of nations in that era. The experience of the American colonies under his régime prepared the colonists to suspect the purposes of their king. It was but natural that their first step toward continental government here in America ignored the single executive idea. From 1774 to 1781, the period of the Continental Congresses, no such head was recognized, aside from the military dictatorship accorded to Washington as a personal compliment. From 1781 to 1789, the period of the old confederation under the Articles of Confederation and our first governmental experiment of organic character, no single head of government was recognized. Its nearest approach was the Executive Committee, composed of one member from each colony, or rather State, to act during the recess of the Congress.

Coercive power necessary. In the Federal convention which met in response to the urgent demands for a stronger government, after incalculable suffering under eight years of notorious weakness due in large part to the absence of an executive head with some coercive power, the need of such

head of government was generally recognized and urged. Just what he was to be, and how he was to be secured, were among the problems of that great body. There were some who desired a life Executive; others, a long-term; while still others desired the shortest possible term consistent with the executive function.

Opinion in Federal convention. There were those who desired the Executive elected by the national legislature, others by the Senate, still others by the States; a fourth class believed he should be elected by the people, while still another class insisted that he should be chosen by an electoral college created for the specific purpose with discrētionary powers. This last plan prevailed, as a compromise between the advocates of the extreme views of restricted elections and the advocates of popular elections. However, the original idea of discretion was at once abandoned. Not since the election of John Adams has an elector exercised such discretion, except in the case of William Plumer of New Hampshire in 1820, when he refused to vote with the college for Monroe, on the ground of Monroe's unfitness. This lawful right of an elector to exercise his discretion to vote in the college for whom he will, without reference to national campaigns or candidates nominated by national conventions, has in one hundred years given way to the unwritten law of voting for the candidate nominated by the party in convention.

Method of choosing the electors. The electoral college having been decided upon, the next thing to claim the attention of the framers was the method of choosing the electors. Various methods were proposed and after lengthy consideration the controversy ended in a victory for the States, by leaving the question to the judgment of the State legislatures. The section is worded as follows: "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in Congress."

It will readily occur that the framers desired to guard well the rights of the States and at the same time balance the executive function by the legislative function, and permit the choosing body, limited in size to offset any danger of democratic tendencies, to safeguard the welfare of the people. The object sought was an Executive, effective but not dangerous, with as much authority vested in him as would be consistent with the liberty of the citizen. The consensus of opinion united upon a single Executive to be elected by a select body for a short term, thus centering responsibility in one head and subjecting that head to the frequently expressed will of the people.

Lack of uniformity. The latitude accorded to the States in the choice of electors was a guaranty against uniformity. Thirteen States acting independently, with freedom to employ any method suited to their convenience, are apt to employ different methods of procedure. The Constitution left the legislatures free to choose electors for President and Vice-President while acting in the capacity of a legislature, or permit the voters of the State to make the choice, or to constitute some intermediate body to perform the duty. Since the adoption of the Federal Constitution there have been employed three ways of selecting the electors: (1) By the legislature of the State acting as such; (2) By the people of the State voting on a district ticket, and (3) By the people of the State voting on a general ticket.

First election. In the first presidential elections, the legislature method obtained quite generally. It was employed by Connecticut, New Jersey, Delaware, North Carolina, South Carolina and Georgia. The district ticket was employed by Maryland and Virginia, while Pennsylvania adopted the general ticket. Massachusetts and New Hampshire combined the methods. Rhode Island and North Carolina took no part in the first election, neither having ratified the Constitution. New York had not agreed upon the

method of choice of electors and consequently it took no part in the first election.

Method employed down to 1816. In the second election Vermont, Rhode Island, New York and Kentucky adopted the plan of States allowing the legislature to choose the electors. Massachusetts and New Hampshire permitted the people to make the choice, the former on the district, and the latter on the general, ticket plan. In the third election Tennessee adopted the legislature plan, while North Carolina adopted the district plan. But little change was made down to 1816, when Rhode Island adopted the general ticket and was followed by North Carolina and New Jersey later.

Legislature method and King Caucus. The Congressional Caucus at this time was coming into bad repute. It was referred to as "King Caucus" by its enemies, led by the eccentric John Randolph of Roanoke. The career of James Monroe was linked with the opposition to this method of nomination. It was revealed that all the electoral votes cast against him in 1816 came from the States whose electors were selected by the legislatures. The fact that the anti-caucus leaders had favored Monroe against Madison in 1812, and the caucus leaders had favored Crawford against Monroe in 1816, viewed in the light of the Monroe opposition being confined to the States selecting electors by the legislatures, tended to identify the ill-repute caucus with the legislature method of choosing electors for President. This circumstance brought the method into disfavor. The last congressional caucus was held in 1824. In the election of that year twenty-four States participated. Only six of that number employed the unpopular legislature method. Except Virginia's vote, the only votes received by Crawford, the caucus candidate, were cast by these six States. By 1828 only three States, Delaware, Vermont and South Carolina, retained the legislature method. Delaware and Vermont abandoned it by 1832, and South Carolina not until 1864.

District and general ticket. It has already been stated that the popular methods of selecting electors were by the general ticket and the district ticket. By the former method the voter casts his ballot for all the electors to which the State is entitled, their names appearing on one ticket, while by the latter he votes for only three electors, the one representing his congressional district, and the two representing the senators. In case the State has congressmen-at-large he would vote also for the electors representing such congressmen. As early as the Burr episode in 1800 1801 contention arose over the matter of choosing presidential electors and it continued more or less to agitate the people until 1816, when a strenuous effort was made to secure an amendment to the Federal Constitution providing for the uniform method throughout the States of selecting electors by the district plan. Some of the States, especially Massachusetts and North Carolina, urged the district plan, but, receiving no encouragement, adopted the general ticket plan. Maryland, however, consistently followed the district plan until 1832, when she likewise adopted the general ticket plan. Michigan tried it as late as 1892, only to abandon it at once.

Advantage of district plan. The district plan has been urged by its advocates on the ground that it is most representative and that it would prevent the great centers of population from exerting undue influence in the elections. In the latter case its advocates claim that the tremendous majorities could count for the centers only and could not unduly influence the other parts of the country. It is urged that it would eliminate largely the power of pivotal States to which is due so much corruption in our politics. It is claimed by many reformers that the pivotal State is a convenience only to the political mathematician and the ward politician, and is keenly hurtful to the public weal. These reformers remind the public that since 1864 one of the great parties has gone to New York for its candidate in every quadrennial election down

to 1896 and 1900, when it went to Nebraska, but in the next campaign it again chose a New Yorker. New York's position in an election is due to its large vote so nearly equally divided. In the past this State has been a fair barometer of national politics. From 1792 to 1904, with three exceptions, the electoral vote of the State was cast for the successful candidate. The three exceptions were in 1812 when her vote was cast for Clinton, in 1856 when it was cast for Fremont, and in 1876 when it was cast for Tilden.

Dangers of pivotal States. It is urged that the chief evil growing out of a pivotal State is due to the fact that the situation enlists bad men and employs bad methods in the canvass. The way a pivotal State goes, so goes the nation; and it is asserted that the way the city goes, so goes the State, and the way the purchasable element of the city goes, so goes the city. The inevitable conclusion is that too much power is given to the corrupt element. In confirmation of these assertions the public attention is called to the activity displayed in the expenditure of money in the effort to control the cities. It is argued that the district system would confine the power of this element to the districts in which the city is located, instead of extending it in such a way as to determine the vote of the entire State.

Sectionalism kept up. It is asserted that the present method assists in keeping alive a sectional feeling. Too often since 1856, in our national elections, have the two sections, the North and the South, been arrayed against each other. The united electoral vote from the North is generally depended upon to offset the vote of the solid South, a constant reminder of war and ante-bellum times. The district ticket would disunite the united North and divide the solid South. Under it every State in the Union in a fair election would often divide its electoral vote.

Defeats voice of people. The general ticket is also responsible for the disparity between the electoral and the popular vote. As has been stated, the candidate securing the majority

of the popular votes does not necessarily obtain the majority of the electoral votes. For instance, in 1884, in New York and Pennsylvania combined, Blaine received at least 80,000 more votes than Cleveland, but the latter received thirty-six electoral votes while the former received only thirty-two. Such cases as this are the logical result of the electoral system.

Remedy suggested. There are those who advocate the total elimination of the electoral system and the adoption of an amendment providing for the election of the Executive by a direct vote of the people. The old system, they assert, is worn out. This agitation has frequently taken the form of a recommendation of an amendment, but has never succeeded in winning the constitutional two-thirds majority.

Résumé. All the early States except Virginia, Maryland and Ohio, in the first elections, employed the legislature plan. It was employed but once by Pennsylvania (1800), by New Hampshire (1800), and by Louisiana (1824). It was employed continuously by Connecticut to 1820; by New York to 1824; by Delaware to 1828, and by South Carolina to 1860. The District ticket plan was used but once by Pennsylvania in 1816; by Illinois in 1824, and by New York in 1828; and twice by Tennessee and Maine (1824–28). It was continuously employed by North Carolina to 1808; by Virginia to 1816, except the elections of Jefferson; by Massachusetts to 1824, except the first election of Jefferson; by Kentucky from 1800 to 1824, and by Maryland from 1788 to 1832. The general ticket which to-day is employed by all the States, superseded the other methods quite early. It has been employed continuously by Pennsylvania from 1800, except in the election of Monroe in 1816; by New Hampshire from 1788, except in the first election of Jefferson; and by all the States from 1828, except Maryland which adopted the method in 1832, South Carolina which adopted it in 1868 and the instances of Colorado in 1890 and of Michigan in 1892.

Work after the people have voted. To render effective the constitutional power relative to the installation of the American Executive, Congress has enacted various laws. By these enactments, now in force, there are four important days in the process: (1) When the electors are chosen, which is at present uniform throughout the country; (2) When these electors meet in their respective States and cast their votes for President and Vice-President, after which they seal the returns and send one copy by special messenger to the presiding officer of the United States Senate, another copy by mail to him, and still another copy is deposited with the Federal judge in the district; (3) The day on which the presiding officer of the Senate, in the presence of the members of both Houses, counts the votes and declares the result, and (4) The day on which the President-elect and Vice-President-elect are inaugurated and assume the duties of their respective offices.

The Presidential Succession Law of 1886 covers all emergencies, except in the case of the death of both President-elect and Vice-President-elect between the date of the official count, the second Wednesday of February, and the inauguration on the fourth of March.

Failure to make a choice. The electoral system for choice of Chief Magistrate still prevails. In accordance with this system a presidential election has been conducted every fourth year since the first election in 1788, and during this time the people have failed to make a choice at least three times. The first time was in 1800, the second in 1824, and the third in 1876.

The disputed presidency. The last instance of a failure of the electoral college to make a choice of President is the historic Hayes-Tilden campaign of 1876. The story of this dispute has so often been told that a mere recital of the salient facts will suffice. Thirty-eight States took part in this election, including Colorado, whose electors were appointed by

the State legislature. Since the close of the war most of the Southern States had given their electoral votes to the Republican candidates, because of the method and results of Reconstruction. Gradually by various means these States returned to the Democratic fold. By 1876 these States were classed as doubtful with advantage strongly inclined to the Democrats. Aside from these States, the doubtful column included New York, Indiana, Connecticut and New Jersey. The prestige of Tilden in his own State (New York) and Hendricks in his (Indiana) gave the Democrats the advantage in both of those States. Within a few hours of the closing of the polls the Democrats made official claims to the victory. The following morning, November 7, most of the newspapers of the country conceded the election of Tilden.

A complicated situation. The whole vote cast was 369. The necessary majority was 185. The Democrats claimed 203 for Tilden. The Republicans claimed 185 for Hayes. Both parties claimed the electoral votes of Oregon, South Carolina, Florida and Louisiana. This was the situation at the beginning of a most serious dispute which was a severe test of republican institutions. The four months intervening between the election and the inauguration of Hayes were fraught with the gravest dangers. Double returns were made and sent in from the four States in dispute. In all these States the contest took on the bitterest partizan character. President Grant, fearing violence in connection with the count in the States, recommended that each party despatch representatives to the States to witness the proceedings. He also instructed General Sherman to "see that the proper and legal boards of canvassers are unmolested in the performance of their duties." The President's instructions continued, "Should there be any grounds of suspicion of fraudulent counting on either side, it should be reported and denounced at once. No man worthy of the office of President would be willing to hold the office if counted in, placed there by fraud;

either party can afford to be disappointed in the result, but the country cannot afford to have the result tainted by the suspicion of illegal or false returns."

Proceedings in the States. This prompt action of the President was presented later on by some of the Democrats as an interference unwarranted by the facts. However, the situation as revealed justified the action. In Louisiana chaos reigned. There were two governments sparring for supremacy. That State had two governors, two returning boards, two sets of returns, and two electoral colleges, each insisting upon its rightful authority. In Florida both sets of returns had a semi-official character. The Democratic electors were certified to under the authority of the Supreme Court of the State in a decision declaring the returns from the counties final. These returns gave Tilden a small majority in the State. The State canvassers certified to the election of the Hayes electors, and their certificate was endorsed by the governor of the State. In South Carolina the Republican electors had proper certificates, but the Democrats charged that they had been procured by aid of Federal troops. In Oregon a peculiar situation prevailed. The governor refused to certify to the election of a certain Republican elector on the ground of ineligibility, and granted it to the Democratic elector receiving the highest vote on the Democratic ticket. When the Republican electors were refused certification, they met and voted for Hayes. The Democratic elector holding the governor's certificate appointed two other electors, and proceeded to cast the vote of the State for Tilden. These four States cast twenty-two electoral votes, all of which were needed to elect Hayes, with no vote to spare. Tilden had 184 votes undisputed and therefore needed but one more to win the contest. The face of the returns, according to the Republican count, gave Tilden a plurality of the popular vote of 252,224.

How the count was conducted. For the first time in our history the election of Chief Magistrate was in doubt after

the returns were made, and the question of determining the result became at once a serious problem. Open charges of fraud on both sides were freely made. It was a new phase of the election of President of the United States. The question of counting the vote has been an interesting one from the beginning. The Constitution provides that, "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." The questions at once arise: "Who counts the votes, the President of the Senate, the members of Congress, or both?" "Does the President of the Senate do the counting with the members of Congress as witnesses?" The possibility of a dispute arising over the count, various attempts were made to settle such questions but without success.

The Twenty-second rule. Finally, in 1865, the famous Twenty-second rule was adopted. It provided for the appointment of three tellers, one on the part of the Senate, and two on the part of the House. These tellers were to examine the certificates of the electoral votes in the presence of the two Houses, make lists of the same, and deliver them to the President of the Senate, who then is required to "announce the state of the vote and the names of the persons, if any, elected." If any question should arise among the tellers in the counting of any votes, the Senate should withdraw and the question should be submitted to that body for its decision. The same question should also be submitted to the House for its decision. Debate in either House upon the question was forbidden. No question could be decided affirmatively without the concurrent vote of the two Houses. By this law an objection from either House is sufficient to reject the vote of a State. This rule was the source of much feeling in the count of 1869, when an attempt was made to reject the votes of Georgia. In the Greeley campaign the votes of Georgia, Arkansas and Louisiana were rejected under this rule.

The count in 1877. Both in 1801 and in 1825 the Constitution provided the remedy. But in 1877 neither the Constitution nor the Twenty-second rule offered a remedy. The Constitution provided a way for cases of failure to elect a President, but in this case both parties claimed the election. The Twenty-second rule specified the method of counting the vote, but in this case both parties claimed the right to make the count. The Constitution provides that the count shall be made in the presence of both Houses. In this case the Senate was Republican, and the House Democratic. The old question "Who shall make the count?" was still open to dispute. If the President of the Senate is the authority, then the Hayes electors would be counted. If the two Houses are the authority, then there would be no choice, as the Twenty-second rule forbade any vote to be rejected without a concurrent vote, and in this case neither House favored rejection.

The Joint Electoral Commission. Finally a compromise was reached in the agreement to submit the dispute to a Joint Electoral Commission, to be composed of fifteen members: five from the Senate (three Republicans and two Democrats), five from the House (three Democrats and two Republicans), and five from the Supreme Court of the United States (two Republicans, two Democrats, and one Independent). This was a Democratic measure, although Mr. Tilden strenuously opposed it from the beginning. In the House 158 Democrats voted for it, and only 18 voted against it; while 33 Republicans voted for it, and 68 voted against it. The personnel of the Commission insured the nearest possible approach to a fair result. As originally planned the Commission was to be constituted of seven Republicans, seven Democrats, and one Independent. It was agreed that David Davis of Illinois was to be the fifteenth member. Judge Davis accepted an election to the Senate which prevented his serving on the Commission, and Justice Bradley was substituted. He voted

with the Republican members and signed the certificate giving Hayes the electoral votes. The other seven members refused to sign the report. The Senate adopted the report of the Commission, but the House rejected it. According to the Twenty-second joint rule no vote could be rejected without a concurrent vote, and consequently the report of the Commission stood as the legal adjustment of the matter.

The result. This adjustment will remain a source of dispute. There were charges and counter-charges of frauds in the interest of partizan victory. The investigations both at the time and at subsequent times reveal grounds for such charges. Aside from the truth or falsity of the charges, the Democratic party was unfortunate in the manner of the adjustment. It appears that had the Democrats acted in accordance with Tilden's desire, namely, that the members should hold out until after the 4th of March, when the election would have been taken to the House of Representatives by the force of the Constitution, Tilden would have been elected. But this position, which appealed to Tilden as a constitutional disentanglement of the troublesome affair, did not appeal to the Democratic leaders in and out of Congress. The modification of the Twenty-second rule, in whose trap the Democrats were caught, was also unfortunate for the Democrats, and it could not have been modified without Democratic support. Still a third misfortune for the Democrats arose from the withdrawal of Judge Davis. Had he remained on the Bench, it is possible that the result of the contest would have been different. But, by the vote of the Illinois legislature, he was chosen as the Democratic senator-elect from that State, which precluded his serving on the Commission.

Lessons from the decision. Whatever may have been the justice of the finding of the Commission, the acceptance of its decision by the American people speaks volumes. Up to the very day before the inauguration of Hayes, threats were made and statements heard on all sides that Tilden would be inau-

gurated. These warnings became so ominous that President Grant was induced to take precaution to see that no violence would be perpetrated. Hayes had previous to the 5th of March, the day on which he was inaugurated, taken the oath of office, the fourth being Sunday. After the strain of months of the most intense excitement, during which extravagant statements had been heard on all sides, the climax was reached on the second of March, a little after four o'clock in the morning, when the President of the Senate made the official announcement of the election of Hayes. The country was thrown into paroxysms of excitement. To the great credit of all the people the decision of the Commission was acquiesced in, and Hayes was regarded as the legally constituted President by most of the people. But a very respectable portion of the Democratic party contends that Tilden was deprived of the high office to which they insist he was legally elected. The event at any rate put the patriotism of the American people to the severest test, a test which it is hoped will never again be repeated.

CHAPTER XXII

CONCLUSION

The American type. An attempt has been made in this volume to trace the history of political theory in the United States, and account for the unique party organization found here. In it, the peculiar type of American political theory is easily observed—a type peculiar in itself, especially when compared with those of European countries. While following the general course of political theory of all modern governments, the American type has taken on a character different from all others. In no other country have the same conditions obtained. Here was a virgin soil, uncontaminated by old-world ideas of society, religion and government. To occupy this soil there came a people peculiarly adapted to plant such a system as was planted—the American democracy, a republic, a representative democracy. The people were men and women of talent, of conscience, and of deep convictions, as well as of determination. Heredity helped furnish the seed, and environment assisted in preparing the soil.

The party system. Perhaps the most unique feature of the American system is the party system, with all its attendant machinery. This system is an evolution, rather than a creation. It was a natural outgrowth of conditions. The very motive which prompted the earliest settlements, insured a distinct political system. The oppression from which the fathers fled prompted that freedom of speech and of worship, the consequence of which is contention, which is another

expression of party spirit. The variety of opinion, both political and religious, together with the limitless expanse of the new world, insured a lack of uniformity of opinion and party divisions on questions, both local and general. Conditions invariably confronting a new government necessitated a union of effort and consequent variety of method, a natural condition for the formation of parties. This situation accounts in part for the numerous religious denominations which have sprung up in every part of the country. But while religious differences gave life to various denominations, and political differences permitted separate political parties, the spirit of democracy was sufficient, that between democracy and aristocracy the latter had no footing. The nearest approach was the pre-Revolutionary division, the Tory versus the Whig. While democracy was supreme in the new world, its very suggestion implied variety of method.

Foundation principles. As has been stated, the rational basis for party division in this country is the contention between liberty and authority. Leaders have arisen who stood as the opponents of these principles in the American system. Parties have been organized upon these principles as fundamental. In this party contention, each factor has revealed both its strength and its weakness, and in obedience to the law of the survival of the fittest, the resultant of the struggle is a system which incorporates both elements as co-ordinate. Upon these two fundamental elements, liberty and authority, the structure of the American system has been erected.

Party control. For one hundred and twenty years the party system has been maturing. From 1789 to 1801 the Federalist party had control of the machinery of the government. During much of this time aggressive opposition was offered by the Anti-Federalist, better known as Republican party. From 1801 to 1845 the Republican party, later called the Democratic party, held control with the possible single exception of the younger Adams, 1825–29. While he was a Republican, Adams

differed from his party upon the construction of the Constitution. Yet as a Republican he had conducted the Foreign Relations department of Monroe's Cabinet, of which he was regarded the most distinguished member. Harrison's inauguration in 1841 was the introduction of the Whig party to power, but the death of Harrison on April 4, 1841, and the inauguration of Tyler limited the Whig control to a single month. Tyler broke with his party on the Bank question, and returned to his former Democratic allegiance. In 1845 Polk's inauguration permitted the Democrats to continue their policy. In 1849 the election of Taylor gave the country its only Whig administration. Taylor died in office, but his policy was continued by his successor, Fillmore. The accession of Pierce to office, in 1853, inaugurated the Democratic policy which continued with Pierce and Buchanan down to 1861. In the latter year Lincoln inaugurated the Republican rule which continued without interruption for twenty-four years. It then gave way to the Democratic policy under Cleveland. After four years the Republicans returned to power under the second Harrison, who after four years again gave way to the Democrats under Cleveland. After four years Cleveland gave way to the Republicans under McKinley.

Résumé. A résumé shows that the Federalist party controlled the government twelve years, the old Republican party twenty-four years, the National Republican party, under John Q. Adams, four years, the Democratic party, including the Tyler régime, thirty-six years, the Whig four years, the Republican party forty years ending with Roosevelt in 1909. During this period of one hundred and twenty years the government has been administered, at one time or other, by six different parties, if the parties are distinguished by name; if by political theory, only two have been in control. The old Republican and the modern Democratic party held the same theory of government, and should be identified in name as well as in principle. The Federalist, the National Repub-

lican, the Whig, and the Republican, all advocated similar principles, and should be regarded as the same party with different names. Taking this view of parties, the one has stood from the beginning for strong central government, the other for local self-government. The one employed the broad or loose construction of the Constitution, the other the narrow or strict construction. During the one hundred and twenty years of national existence, each party has conducted the affairs of the nation one half of the time. One of the most striking features of this party struggle is the remarkable evenness with which these contests have been fought out. While almost the entire electorate appears at the polls to express its conviction on public questions, only a few thousands make up the majority of one party over the other.

Debt due the parties. To the Federalist party the country owes the organization of the government and the inauguration of the government's policies. Under Washington and Hamilton the finances were provided, a high credit was established, neutrality was announced which has been consistently followed to this day, a strong and vigorous foreign policy was outlined. To the old Republican party, the country is indebted for much of its liberties, for the freedom of speech, of the press, of worship, and the right of petition. To it also the States owe the largest recognition of local self-government, and also the first step toward the marvelous expansion which the country has experienced in the one hundred and twenty years of its national existence. To the National Republican party, the country owes the fostering of the constructive policy, in the establishment of internal improvements, the defense of a system of National Banks, and the adoption of the policy of protection of American industries. This latter was denominated by Clay, one of its greatest defenders, as the "American system," and by Randolph, one of its fiercest opponents as the "bill of Abominations." To the Whig party the country owes a continued fostering of these prin-

ciples. To the Democratic party is due the continued defense of the cardinal principles of the old Republican party. The work of expansion, begun by that party in the purchases of Louisiana and Florida, was continued by it in the annexation of Texas, the occupation of Oregon, the prosecution of the Mexican War with the consequent accession of the vast Southwest. Its expansion principle was displayed in the party platform committing the party to the annexation of Cuba. To this party the country owes also the prominence of the State rights doctrine. One of its fundamental principles is the protection of the many against the few. It therefore declaims against special privileges and abuses of corporate wealth. Its platform is the welfare of the many and special privilege to none. To the Republican party, the country owes the abolition of slavery and the citizenship of the negro. To it, mainly is due the prosecution of the war and the preservation of the Union. It was during the period of its incumbency that new applications of electricity were made, various products of the mine were improved, such as steel, a vast impulse in transportation was experienced, and such a commercial awakening as the world never saw before. Coincident with this commercial awakening, vast combinations of capital were made, the impulse to prevent competition became regnant, and corporate greed threatened the welfare of the many. While the party in power took to itself the honor of first class, it denied the odium of the second which its opponents attempted to fasten upon it. The whole truth is not in the position of either party. The student of political history must recognize genuine worth as revealed in substantial results of the governmental agencies called political parties. Only the arrogant citizen is incapable of beholding the great value of these organizations.

Legitimate objections to the party system. The party system of the nation is open to severe criticism. Its rigidity at times approaches a state of tyranny, which not infre-

quently takes from the citizen the actual fruits of a free ballot. This is accomplished through the machinations of that modern political creation known as "boss." This would-be-leader holds the ballot in the hands of the voters as so much stock in trade, and looks upon an office as a party perquisite, rather than as a public trust. Through this influence the party machinery has at times come into the possession of mercenary men who use it for personal aggrandizement. The American Democracy is a fertile field for the operation of this character of leadership. The chief arena of the "boss" is in the "ring," and his chief reward is a form of speculation. Often this element exercises controlling influence in great political conventions in defiance of the wishes of the people at large. Too often the excuse of those who do not exercise the suffrage privilege is that it does not matter what the voter does, the result is always determined by the politicians, regardless of what the voter says or does. Among leaders of the mercenary type, political principle means nothing. When the parties come under the control of this element, party lines frequently cannot be distinguished. The "bosses" of the parties consort to insure victory, not for the ticket so much as for themselves. Another source of legitimate criticism is that the party system seeks the man of availability, rather than of ability. In other words, it substitutes the politician for the statesman. This criticism does not always hold true.

What of the future. All these charges have some basis in fact, but there is abundant reason to believe that the evils are but temporary. A continuance of the evils depends largely upon the spoils system. This system has already felt the lash of disapproval, and the evil is lessening with the lapse of time. The claims of a self-appointed leader never appeal for support beyond his ability to perform his duties. The real danger lies in the atrophy of the people. Where public opinion is wide awake the rule of the boss is of short duration. He can exist only by the passiveness of the people,

whose sovereign will he ignores when it is inactive. Recent events show that when the administration, either of a State or of a municipality, becomes careless of the rights of the many, the people repudiate that administration, and when a national administration fearlessly espouses a cause the people warmly endorse it. The charge that money can control the electorate is without foundation in fact. Experience has proved that the abuse of privileges by great money interests has led to the most rigid governmental discipline of those interests. The enthusiasm which has greeted the municipal ownership of public utilities in various cities of the country, is an example of public awakening rather than of economic wisdom. The enlargement of the powers of the Interstate Commerce Commission and the strides toward governmental regulation of railroads, telegraphs, coal mining, and the transportation of oil, as well as the close inspection of meats prepared for the market by the great packing houses, are all evidence of the homage that money is compelled to pay to the authority of the people. This fact emphasizes the necessity of a continuous interest on the part of the people in matters of public concern. It also indicates that the supreme factor in American politics is an awakened public conscience. In its presence party tyranny quails, and the party "boss" is repudiated.

Factors in promoting such awakening. The progress of civil service reform has greatly lessened the tyranny of party machinery. The extension of the influence of the independent voter has also wrought to the same end. The recent emphasis of local issues augments this tendency. Interests in the cities are sufficient to confine municipal activity to them, rather than to extend it to national principles. It is a frequent occurrence that the general election results differently from the local city elections. This is due to the independent voter. This sentiment frequently takes the form of organization aside from party, such as the various Civic Leagues, Muni-

cipal Voters Leagues, Betterment Clubs, and various other organizations whose purpose is suggested by the names they bear. The energy of these numerous organizations is expended in the interest of the community regardless of political parties. Not infrequently their numbers and influence give them the balance of power, with ability to dictate either the candidate, the policy, or both.

Healthful symptoms. Party organization is necessary in a government of public opinion. It is the manner in which that opinion is centralized and expressed. It is the agency by which public opinion passes from the stage of mere opinion into legal enactment after mature consideration of its merit. It is the means which insures the widest examination under the most enthusiastic advocacy on the one side and the most strenuous opposition on the other. It thus furnishes the occasion for the deepening of public interest upon public questions. In this respect, its influence is superior. The freedom with which the common people enter upon the discussion of important questions, and the marked ability displayed by some of the disputants, show a valuable element in American political life. Whatever might be the strength or weakness of a policy foisted upon the people by the party leaders, the heat of a campaign quite generally burns out the dross and leaves the issues clearly defined. The universal interest aroused by national campaigns compensates for the loss of time and energy, since it is the source of a wide intelligence of the general public upon important issues. This general enthusiasm would not exist outside of political organization. With the constant multiplication of local interests with the increasing age of the nation, individuals will count for greater influence and parties for less. The individual's influence will be exerted most effectively within the organization, but only when his independence is of such character that his affiliation with party is limited to the party's respect for justifiable measures and honorable candidates. In other words, party organization is effective in the

degree that its membership displays its independence of dictatorship. Likewise a partizan's influence is effective in the degree that he exercises his prerogative to think for himself and manifests his attachment to the principles upon which his party was founded. This independence of the citizen voter and the numerous leagues in the interest of better politics, together with a disposition of party organization to respect the will of the masses, are all symptoms of a healthy state of American politics. With the general intelligence of the masses rest the strength of American political theory, and the justification of party organization in the United States.

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